Practical Guidance

Cross-Border Joint Venture and Strategic Alliance Guide (Mexico)

A Practical Guidance® Practice Note by Jesus Manuel Colunga and Juan Carlos Serra, Basham, Ringe y Correa

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This Cross-Border Joint Venture and Strategic Alliance Guide (Mexico) discusses relevant law and practice related to the formation and operation of cross-border joint ventures, including corporate and contractual joint ventures, in Mexico. For other jurisdictions see the Cross-Border Joint Venture and Strategic Alliance Resource Kit.

Structures

What are the standard forms of joint ventures / strategic alliances and common features of each?

Joint ventures are not expressly regulated under Mexican law. As a result, private parties may agree to form a joint venture either (1) contractually or (2) by creating a separate entity to operate the business or to implement the transaction.

The most common legal forms of joint ventures agreements are:

- Joint venture agreements
- Joint venture entity(ies) taking the form of commercial structures identified under the Mexican General Corporations Law (GCL) or Commercial Laws –and–
- Unincorporated partnership consortiums (*asociación en participación*)

In addition, Mexican law allows the parties to contractually agree on any matter not contrary to Mexican law.

What are some of the key corporate governance, tax, regulatory, and timing considerations that could impact the choice of structure?

As will be more fully described below, the most common commercial business structures in Mexico are limited liability stock corporations and limited liability companies. These structures provide similar treatment and benefits from a corporate governance, tax regulatory, and timing standpoint.

In addition, the Mexican Securities Market Law provides a type of corporation known and identified as "investment promotion companies" or "*sociedad anónima promotora de inversion*" (SAPI). Because this structure provides more flexibility regarding corporate governance, it is the preferred vehicle for private equity transactions, as more fully described below. This type of commercial structure provides an ideal vehicle for purposes of creating joint-venture entities, since they provide flexibility with the type of agreements and provisions that may be agreed by the parties,

such as (i) non-compete provisions, (ii) drag-along and tag along rights as well as limitation for the transfer of shares and (iii) the possibility of creation shares with different corporate and economic value.

It is important to consider that, based on foreign tax laws and regulations, certain jurisdictions may consider limited liability companies as suitable from a tax standpoint.

Joint ventures are subject to taxes in Mexico. Joint Ventures are required to pay income tax on their worldwide income. Mexico does not have any corporations deemed as transparent for tax purposes. Joint Ventures are subject to income tax on their profits at the 30% rate. Profits shall be obtained by reducing from their global gross income, the allowed deductions, the employees' profit sharing, and tax losses carried forward. The fiscal year runs from January 1 to December 31. In addition, they are required to make monthly estimated payments.

Gross income includes all types of income received in cash, in kind, in services, in credit, or in any other form, earned during the corresponding fiscal year. Only certain express items of income are not regarded as included within the gross income, such as capital contributions, dividends, revaluation of assets, among others.

In connection with allowable deductions, taxpayers may deduct only expenses (supported by electronic invoices and other evidence) which are strictly necessary for fulfilling its corporate purpose. The deductible items includible are business expenses, depreciation of assets, paid interest, cost of sales, among others.

Non-deductible items are among others: (i) non-deductible or capped investments (e.g., automobiles and airplanes); (ii) capped travel expenses, restaurant expenses, interest in some cases; (iii) payment of damages and losses (liabilities paid by the Mexican residents); (iv) 47% of salaries and fringe benefits that are exempt for the employees (this percentage could be increased up to 53% if certain conditions are met); (v) prorated expenses allocated between the Mexican residents and other companies of the group; (vi) payments made to related parties that are resident of preferential tax regimes (CFC rules); among others.

Thin capitalization rules apply to any debt incurred with a foreign-related party. The threshold is 3:1 debt-to-net equity ratio; otherwise, interest associated to the excess is not deductible.

Furthermore, interest paid by the Joint Venture to related parties may be treated as dividends in certain circumstances (e.g., back-to-back loans, interest not paid under arm's length conditions, interest conditioned on profit, etc.).

In addition, Mexican transfer pricing rules apply to business transactions carried out between related parties, which are based on the arm's-length standard, considering that Mexico has adopted most of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations rules.

Can a joint venture or strategic alliance be formed for any purpose?

Joint ventures or strategic alliances are agreements, contracts, or entities entered and/or created for the purpose of developing and implementing specific activities or projects, which is not contrary to Mexican Law.

As such, the purpose of a joint venture or strategic allegiance may consist of anything the parties agree to, provided it is not against the law or its activities are restricted as a matter of law.

It is noteworthy to mention that the documentation governing a joint venture (a contract in the case of a contractual joint venture, or the bylaws in the case of an entity-based joint venture) expressly specify the scope and objective(s) of the joint venture or strategic alliance.

Once the joint-venture entity or strategic alliance is created or entered, the corresponding permits and authorizations shall be obtained with the relevant governmental agencies for the development of the corresponding scope of activities.

Are there any forms of joint ventures or strategic alliances that are more typically used in certain industries (such as real estate, pharmaceutical, or technology)? Why are such forms favored?

The most common joint venture and strategic alliance vehicles in Mexico are (1) limited liability stock corporations, (2) limited liability companies, and (3) investment promotion companies. These corporate structures are commonly accepted for every industry due to flexibility, a simple incorporation process and especially, the fact that it provides the shareholders/partners with limited liability for activities carried out by the company.

No general restrictions or other provisions apply that may prevent these types of corporate structures from being used by a joint venture in any particular industry in Mexico, other than as discussed below.

Are there any industries that would not permit or would not be conducive to a joint venture or strategic alliance?

As mentioned above, the particular industry in which a joint venture or strategic alliance is operating has no bearing on

the choice of structure. However, the public bid process for participation with governmental agencies in public/private projects, or requirements for a particular project, may impact the choice of structure.

How is a joint venture or strategic alliance structured to minimize potential liability? Are there instances where parties to a joint venture or strategic alliance may knowingly choose a vehicle without limited liability and, if so, why would such party make that choice?

Mexican corporate structures limit the liability of stockholders or partners, since they provide a corporate veil in favor of the shareholders that may only be pierced in specific events as provided by law. Therefore, the incorporation of a company is an ideal vehicle for operating a joint venture, since the stockholders will derive the benefit of limited liability (except in specific cases as mentioned above, such as cases of fraud or willful misconduct).

The Mexican limited liability stock corporation and the limited liability partnership are favored structures under Mexican practice that provide a limitation of liability for the benefit of shareholders/partners.

Notwithstanding, although there may be a limitation of liability with respect to third parties, joint venture parties may enter into an agreement allocating their rights, duties, and obligations among themselves.

Statutory Framework

What is the applicable statutory framework for each structure discussed above?

The Mexican GCL recognizes the existence of seven types of commercial structures, which are:

- General partnership (*sociedad en nombre colectivo*)
- Limited partnership (*sociedad en comandita simple*)
- Limited liability company (*sociedad de responsabilidad limitada*)
- Limited liability stock corporation or (*sociedad anónima*), which may adopt the modality of a *sociedad anónima promotora de inversión* (SAPI)
- Limited partnership with shares (*sociedad en comandita por acciones*)
- Cooperative association (*sociedad cooperative*)
- Simplified share entity

The limited liability company (*sociedad de responsabilidad limitada*) and limited liability stock corporation (*sociedad anónima*) are the most commonly used corporate structures. Key characteristics of each structure are discussed below.

Limited Liability Stock Corporation (Sociedad Anónima)

This is the most accepted structure in the business field. It operates under a company name. Ownership is in shares of stock and stockholder's liability is limited to the amount of capital contributions.

The corporate name selected is followed by the initials "S.A." or the words "*sociedad anónima*."

In order to incorporate such structure, a minimum of two stockholders is required. The share capital is determined by the shareholders. The authorized capital must be fully subscribed to within one year. The company may also be formed as a variable capital corporation, or "S.A. de C.V.," which means it has the flexibility for the partners to carry out capital contributions or withdrawals without having to change its articles of incorporation.

The management of the corporation is entrusted to a sole administrator or a board of directors.

This type of corporation is forbidden to acquire its own shares, except by judicial adjudication in payment of the company debts.

Limited Liability Company (Sociedad de Responsabilidad Limitada)

This structure is treated as a partnership for U.S. tax purposes and is formed by members whose obligations are limited to the payment of their capital contributions. Ownership is not represented by negotiable stock certificates (whether registered or bearer) and are transferable only in specific cases provided in the GCL. After the limited liability stock corporation (S.A.), this is the next structure most commonly used.

The commercial name of a limited liability company consists of the names of one or more associates, followed by the phrase "sociedad de responsabilidad limitada" or its abbreviation, "S. de R.L.".

A limited liability company may not consist of more than 50 members. The company may also be formed as a variable capital corporation, or "S. de R.L. de C.V.," which means that the partners have the flexibility to effect capital contributions or withdrawals without having to amend the articles of incorporation.

The capital of the company is determined by the partners. Ownership is divided into "parts" that may be unequal in value and category, but which must always represent one peso or a multiple of such amount.

Unanimous approval of members is required to approve amendments to the articles of incorporation changing the company's purpose, rules that govern the members' obligations or sale of members' participations.

Are there statutory or other limits on the duration of a joint venture or strategic alliance?

In the event the parties incorporate a joint venture company, the duration of the company may be set for a determined number of years or on an indefinite basis, taking into the account the GCL.

On the other hand, for contractual joint ventures, because the Mexican legislation does not have a particular chapter governing the joint venture relationship, the parties may freely determine the duration of the agreement.

However, it is noteworthy to mention that in the event the joint venture falls within certain industries (i.e., real estate leasing), duration restrictions may apply, based on the nature of the obligations. For instance, some civil codes of Mexico provide that real estate leases may not exceed 15 to 20 years, depending on the nature and location of the real estate.

Do joint ventures or strategic alliances have to be registered with any federal or local body other than the Public Registry of Commerce where the charter or other organizational documents must be filed in order to effect the entity's formation?

According to Mexican legislation, a joint venture agreement, as an agreement per se, does not need any kind of registration with governmental authorities.

Notwithstanding the foregoing, a joint venture with real estate assets as contributions may be subject to registration. Likewise, joint ventures participating in certain businesses and activities may require the grant of licenses or permits from governmental authorities.

In addition, if the Joint Venture entity has foreign investment, it shall be subject of registration with the Mexican Foreign Investment Registry.

Regulatory Environment

Are there any antitrust matters to be considered in forming a joint venture or strategic alliance?

In accordance with Mexico's Federal Antitrust Act, certain joint ventures may require the review of the Federal Antitrust Commission. Such review could focus on the parties involved in such joint venture and their market participation.

For instance, if a joint venture is entered into by direct competitors for anticompetitive purposes, it may trigger antitrust prohibitions.

However, even if the joint venture partners are not considered competitors, it is important to review the joint venture activity in order to prevent an antitrust activity that may result in a fine or disciplinary measure imposed by the Mexican Federal Antitrust Commission.

Formation

What are the procedures in forming a joint venture or strategic alliance?

For a contractual joint venture, the parties simply enter into a written agreement governing their relationship. The agreement may be entered simply in writing, ratified before a notary public, or even formalized in a public instrument, at the election of the parties and pursuant to the Mexican Notarial Law.

Below is a general description of the typical steps required in connection with forming a company under Mexican law (specifically, a limited liability company and limited liability stock corporation):

- Secure a permit from the Department of Economy for the incorporation and obtain approval of the right to use the name of the company. The Department of Economy maintains a list of the names it has approved in the past and does not approve names already given out, though companies already dissolved or liquidated are not on record in this agency.
- The following internal procedures: (1) the review and approval of the corporate bylaws by the shareholders/partners; (2) the issuance of a power of attorney by the shareholder/partners to incorporate the new company (which must be notarized by a notary and apostilled before the Secretary of State); (3) the designation of directors/managers (or sole administrator, if applicable),

officers, and statutory auditors or an examiner (usually a member of the external auditing firm); and (4) the granting by the new company of powers of attorney to the persons that will be in charge of the day-to-day operations.

- In accordance with the new Anti-Money Laundry Law, it is necessary to provide the notary public with a variety of corporate, tax, and financial documentation/information pertaining to each of the partners/shareholders, whether individuals or entities.
- The articles of incorporation must be submitted before the National Registry of Foreign Investment and before the Public Registry of Commerce.
- Once incorporated before a Mexican notary, the company must file an application for a tax ID number and tax ID card. For such purposes, it will be necessary to grant powers of attorney (usually to the accountant for the company) to represent the company before the Treasury Department. The company will also be required to have a physical location for the Mexican entity. Simultaneously, the company will have to apply for an import and export permit.
- In case the company intends to hire expatriates or to designate foreigners as members of the board of directors or attorneys-in-fact, it is necessary for the company to have the proper migratory documents.
- In addition, the articles of incorporation must be submitted before the National Registry of Foreign Investment and before the Public Registry of Commerce.

What other steps are required to form a joint venture or strategic alliance?

In the case of a contractual-based joint venture, the negotiation and execution process of the joint venture agreement is a complex procedure setting the infrastructure for the partnership.

The following key issues are typically covered in a joint venture agreement:

- The general purpose of the joint venture
- Whether the entity will be incorporated and, if so, the terms to be included in its bylaws
- Identification of the management body of the joint venture and the decision-making process
- Member contributions
- Liability limitations
- Liens and guaranties
- Financing of the project
- Obtaining licenses, permits, and concessions
- Exit of its members
- Inclusion of new members
- Penalties upon possible breaches
- Indemnities among the parties
- Non-compete provisions
- Termination of the agreement
- Provisions regarding any potential conflicts
- Deadlocks

Under Mexican law, there is no standard form agreement applicable by default.

What filings with governmental authorities (if any) are required to form the joint venture or strategic alliance?

Contractual-based joint ventures do not require any filling with federal, local, or municipal authorities. Notwithstanding the foregoing, the business carried out by a joint venture may require certain filings, such as obtaining licenses, permits, authorizations, and concessions.

In the case of entity-based joint ventures that require the incorporation of a new entity, this entity must be registered before the Public Registry of Commerce under a corporate name authorized by the Ministry of Economy and if applicable and subject of having foreign investment, to be registered with the Foreign Investment Registry.

Becoming a Member/Partner

What are the different levels of equity and voting participation in the various forms of joint ventures and strategic alliances? How flexible is each of the structures?

A SAPI is the ideal vehicle to receive investment from private equity funds since, unlike stock corporations and limited liability companies, there are fewer restrictions regarding stockholder rights and transferability of interests, and it provides more flexibility for the contribution of investments by its stockholders.

The following are some of the benefits of utilizing a SAPI:

- Provide a more flexible and modern corporate regime than a normal stock corporation
- Allow minority shareholders to exercise control over the corporate governance of the company, regardless of the percentage of capital stock owned (this would be limited in a limited liability stock corporation)

- Allow more efficient mechanisms to implement outflow strategies of private capital stock
- Percentages for the appointment of directors or statutory auditors are lower than those established for stock corporations
- Allow for non-compete, non-solicitation and limitation for the transfer of shares provisions as well as classes of shares with different corporate and economic rights

What forms of contributions (e.g., cash versus in-kind) may be made by members/partners?

A joint venture member can contribute in any manner, including but not limited to, capital, know how, the license of a certain trademark, rendering of personal services to the joint venture, real estate, machinery, or rights obtained by means of a concession or a governmental authorization.

It is in this regard that a joint venture is an attractive business structure because the parties have the flexibility to contribute particular assets most valuable to the developing business.

Should contributions to the joint venture or strategic alliance be documented? If so, what is the typical form of documentation?

Contributions made by a member of a joint venture will be documented and described within the joint venture agreement.

If the joint venture operates as an entity, contributions will be documented or reflected in the corporate documents of the joint venture company, such as the minutes from a shareholders´ meeting resolving for instance, a capital increase.

However, real estate contributions are required to be registered with the Public Registry of Property and also triggers payment of real estate transfer tax. In addition, contributions in the form of trademarks must be registered with the Mexican Institute of Industrial Property.

Are there any statutory or other requirements regarding the number (i.e., minimum or maximum) or type of members (as in age requirements or legal status; individual or juridical person) in the joint venture or strategic alliance?

As mentioned above, joint ventures permit two or more members. An unincorporated partnership consortium (*asociación en participación*), where only an agreement is entered into, is restricted by two parties.

In addition, the general rules for agreements apply to joint ventures. For instance, only individuals with legal capacity can enter into an agreement, meaning individuals over 18 years of age without any physical or mental disability, as further delineated in Mexican law.

What documentation would typically govern the relationship between partners/members?

The relationship of the members of a joint venture will always be governed by the written agreement entered into and by parties.

An incorporated entity will be governed by its bylaws and articles of incorporation. In addition, a shareholders agreement may be executed between the members in order to include additional governing provisions on a private basis.

Can a public sector body be a member/partner in the joint venture or strategic alliance?

Yes, partnerships between the public sector and private parties are public-private partnerships and are governed by the Public-Private Partnerships Act.

What restrictions, other than contractual ones, are there on a member/partner transferring its interest in the joint venture or strategic alliance?

When a company is incorporated, transfer restrictions will typically be set forth in the corporate bylaws and/or applicable law, depending on the corporate structure.

Commonly, these restrictions may be based on preferential rights for the transfer of the interest, tag-along, drag-along or specific procedures required to be complied for purposes of the transfer.

In addition, if the joint venture is a collaboration including a governmental entity, the terms of the tendering process most often restricts the transfer of such participation.

Restrictive Covenants

What restrictive covenants can apply to members/partners relating to corporate opportunity, non-competition, and non-solicitation?

A non-competition clause may be included in a joint venture, provided that it meets the following conditions:

- The restriction to must be tailored for activities that may compromise the activities of the joint venture and

specifically pertain to activities carried out by the joint venture.

- The non-compete must have a limited period.
- The person subject to this clause must receive economic compensation for the time the non-competition clause is effective.

In addition, parties may agree to non-solicitation obligations provided they are specific and target oriented; that is to say, they are not so general that will not allow one of the parties to hire any type of individual.

Management

How is the joint venture or strategic alliance managed in the different structures? Are there statutorily mandated supermajority provisions?

In contract-based joint ventures, the parties may establish management bodies, such as committees.

For corporate joint ventures, a company will be governed by applicable provisions of the GCL.

In both the limited liability stock company and the limited liability company, the bylaws may include supermajority provisions based on the agreements of the parties (i.e., regarding special or reserved matters).

What mechanisms are there for resolving deadlocks on major decisions?

Joint venture agreements may include a process to resolve any controversy. If such process is not included, the parties may resolve the corresponding deadlock through mediation, a court or arbitration procedure, or buy-out proceeding.

Major decisions of an incorporated joint venture will be adopted by the majority of the shareholders' meeting. However, minority rights for the resolutions of certain aspects of the company are provided by law or may be established in its corporate bylaws.

In the event the parties are in a deadlock, different procedures may be implemented to address the situation, such as a buy/sale procedure, a mediation procedure, or a litigation or arbitration process.

What procedures apply for electing and removing managers in joint ventures and strategic alliances?

In a contractual-based joint venture, the joint venture agreement will identify how the joint venture is managed. However, considering that joint venture agreements are not regulated under Mexican law, there are no requirements, including that for a managing body.

If the joint venture is an incorporated entity, there will be a managing body. In this respect, the GCL establishes that the board of directors or sole director of a company will be appointed by the shareholders' meeting.

However, the corporate bylaws may establish a special procedure for the appointment of directors and the GCL provides that any shareholder or shareholders' group owning at least 25% of the stock of a company, has/have the right to appoint a board member when the board of directors is composed of three or more directors.

Allocating Profits, Losses, and Distributions

How are profits, losses, and distributions allocated among partners/members? Are there legal or regulatory restrictions that may limit the ability of the partners/members to make such allocations on their own?

Unincorporated partnerships consortiums (*asociación en participación*) consist of an industrial partner, who manages the joint venture, and another partner who finances the operations. According to the GCL, profits and losses are shared equally between the partners.

In a contract-based joint venture, the joint venture agreement may provide for any formula governing the distributions of profits and losses.

In a corporate joint venture, a member will be liable and share in losses up to the amount of its capital contribution and share in profits, ratably, based on its relative capital contribution.

A SAPI has the flexibility of any division of profits and losses between the shareholders.

Indemnification

What Indemnification provisions would apply in a joint venture or strategic alliance?

The joint venture agreement may provide any indemnification provisions for the members of the joint venture.

If an indemnification process is not provided in the joint venture agreement, the parties may go before a court and require the payment of damages and losses arising from the breach of the other joint venture party.

It is important to mention that, in accordance to Mexican law, if a claim for indemnification is established based on breach of an agreement, and it results in contractual damages, the parties waive their right to a claim for damages and losses. Thus, they are excluded one from the other.

Exiting or Termination

How does a partner/member exit a joint venture or strategic alliance?

In a contract-based joint venture, the governing agreement will typically address exit and termination scenarios.

However, any of the parties may appear before a judicial authority requesting the early termination of the agreement or its mandatory compliance. Such action may give the other party grounds to request the payment of damages and losses derived from such termination.

How is a joint venture or strategic alliance terminated?

If the joint venture agreement does not establish a termination process, the joint venture or strategic alliance will be terminated when its purpose is fulfilled.

Notwithstanding the foregoing, each party may terminate the agreement by a judicial process in case of a breach under the agreement.

Whenever a joint venture agreement is used for the purposes of incorporating a company in the future, its termination will be governed by the contractual terms agreed to by the parties. However, the joint venture itself will be dissolved and liquidated pursuant to the provisions of the GCL.

Is the termination of a joint venture or strategic alliance subject to the approval of any governmental body?

The termination of a joint venture does not require the approval of a governmental body or entity.

However, particular requirements may be required to be fulfilled prior to termination in the case of (1) public/private joint ventures, (2) joint ventures that require administrative or regulatory permits, or (3) joint ventures in which the parties are part of a public bid.

Foreign Members/Partners

What statutes or rules govern joint ventures or strategic alliances with foreign parties?

Legal doctrine classifies joint ventures by the nationality of its members, and as a result, joint ventures are considered either national or international joint ventures. In both cases, the agreement is executed and is performed under Mexican law.

Most of the joint ventures operating in Mexico and governed under Mexican law are considered international joint ventures. Many foreign entities looking to enter the Mexican market have taken this route because a joint venture provides it with (1) entrance into a new market; (2) knowledge of local enterprise; and (3) knowledge of the market, culture, and politics.

Nevertheless, national or international joint venture agreements have the same structure and regulation as any other entity or enterprise governed under Mexican law. Joint venture agreements are governed by commercial and civil law. Joint ventures operating as entities are governed by the GCL.

What constitutes a "foreign" member or partner of a joint venture or strategic alliance? If there is an attribution rule that traces the ultimate ownership of a local member/partner to a foreign entity, what are the equity-holding and voting-rights thresholds for deeming "control" at each ownership chain?

Foreign members of a joint venture include individuals without Mexican nationality or legal entities formed under the laws of another jurisdiction with corporate domicile outside of Mexico.

Mexican nationality is granted to individuals born on Mexican or abroad from a Mexican father, mother, or both. Foreign individuals can obtain Mexican nationality through the Ministry of Foreign Affairs.

Do such statutes or rules have any limitations regarding foreign members/partners in a joint venture or strategic alliance (for instance, levels of participation, investments, management, etc.)?

Subject to certain exclusions discussed below, there are no limitations impacting foreigners' ability to conduct business in Mexico.

In accordance with the Foreign Investment Act, in Mexico there are some activities solely carried out by the Mexican government, such as:

- Extraction and exploration of hydrocarbons
- Planning and control of the electric energy system
- Generation of nuclear energy
- Radioactive minerals

- Telegraphs
- Radiotelegraphy
- Mail service
- Issuance of paper currency
- Production of coins –and–
- Control supervision and surveillance of seaports, airports, and helipads

Such law also identifies certain activities reserved exclusively for Mexicans or Mexican companies with foreign investment exclusion. These activities are the following:

- Domestic land transportation of passengers and cargo, excluding parcel and courier
- The development of bank Institutions –and–
- Technical and professional services that any special law recognizes as limited for Mexicans

In addition, Mexican corporations with foreign investors will only be able to carry out certain activities if the amount of the foreign investment does not exceed the following percentage within the industries identified below:

Up to 10% Foreign Investment

- Cooperative production companies

Up to 49% Foreign Investment

- Manufacture and sale of explosives, firearms, cartridges, ammunition, and fireworks, excluding the acquisition and use of explosives for industrial and mining activities, and the development of explosive mixtures for use in such activities
- Printing and publication of newspapers for circulation in Mexico
- Series "T" shares of companies owning agricultural, livestock, and forestry land (the capital stock used for the purchase of such land must be represented by a special series of shares that is called series "T")
- Freshwater, coastal waters, and exclusive economic zone fishing, excluding aquaculture
- Port integral administration
- Port services piloting ships
- Shipping companies engaged in the commercial exploitation of vessels for inland and coastal navigation, excluding tourism cruises and exploitation of dredges and floating structures for port construction, conservation, and operation
- Supply of fuel and lubricants for ships, aircraft, and railway equipment
- Radio broadcasting
- National air transport
- Aerotaxi transport
- Specialized air transport

What permits, consents, or registrations are required by foreign members/partners of a joint venture or strategic alliance?

Every legal activity owned by foreign investors must be registered before the National Foreign Investment Registry, controlled by the Ministry of Economy. The Foreign Investment Law requires the registration of the following:

- Mexican corporations with capital comprised of foreign investment, neutral investment, and Mexicans living abroad that have adopted another nationality
- Any foreigner, foreign corporation, or Mexican living abroad (that has acquired another nationality) that carries out commercial activities in the Mexican territory
- Trusts that result in foreign investment rights

Are there any economic incentives for foreign direct investments in a joint venture or strategic alliance?

Mexico's economy has the following programs intended to provide incentives for foreign investments:

Import Tax Refund to Exporters (DRAWBAK)

DRAWBAK offers the possibility of obtaining a reimbursement of the General Import Tax paid on goods that are used in the production or assembly future exports.

Executive Order for the Promotion and Operation of the Maquila Industry (IMMEX)

IMMEX allows foreign owned countries to process and/or assemble temporarily imported materials and parts for reexport to other parts of the world without the obligation to pay general import tax and, if applicable, of antidumping duties.

Sector Promotion Programs (PROSEC)

PROSEC programs are designed to reduce tariffs in particular industries vital to the Mexican manufacturing industry (i.e., electronics, automotive, aerospace, and textiles) for non-USMCA (United States, Mexico and Canada Agreement) countries that would not otherwise be able to benefit from IMMEX, regardless of whether the goods are ultimately exported or remain in Mexico for domestic use.

Certification of Companies in the VAT and IEPS (Excise tax law) modality

If the Company is registered as a certified company, it would be entitled to apply for a tax credit consisting of an amount equivalent to 100% of VAT and Excise tax law for temporary import of goods *Certification scheme "Authorized Economic Operator" (OEA, acronym in Spanish)*

OEA is a program that seeks to strengthen the security of the foreign trade logistics chain through the implementation of internationally recognized minimum-security standard and that grants operational benefits regarding the customs operation that ultimately will lead to expedite the border crossing.

Are there any restrictions regarding distributions to, or repatriation of profits by, foreign partners/members?

In general terms, Mexico does not have restrictions regarding the distribution or repatriation of profits. However, there are some rules that should be noted.

Under the Mexican Income Tax Law, corporate profits are taxed at the corporate level (30% in all cases). The after-tax profits are recorded in a special tax account named "Net Profits Account" (*Cuenta de Utilidad Fiscal Neta*) (CUFIN), so that when profits are distributed to the shareholders from that account, no further "corporate tax" arises, regardless of the residence of the shareholders.

Conversely, if profits that have not derived from CUFIN (which means that they have not been subject to corporate income tax previously), are distributed to shareholders, the distributing entity must pay such tax at the time of distribution. In these cases, the statute provides that the income tax due must be added to the dividends or profits to be distributed. To do so, the dividends must be multiplied by 1.4286, with the product then subject to the 30% corporate tax rate.

Articles 1 and 153 of the MITL establish that foreign residents with no permanent establishment in Mexico earning income from Mexican sources of wealth are required to pay income tax in Mexico.

Pursuant to Article 164 of the MITL, the distribution of dividends or profits by Mexican legal entities is deemed to be a source of wealth that is Mexican and therefore taxable.

Accordingly, Mexican legal entities that distribute dividends or profits typically withhold tax at the rate of 10% of the dividends or profits. This additional tax is different than the corporate tax described above. However, Mexico has entered into tax treaties with particular countries that may reduce the additional taxation on dividends.

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ACADEMIC AND PROFESIONAL EXPERIENCE:

Assistant professor of constitutional law, Universidad Iberoamericana.

Director of thesis and academic student publications at Universidad Anáhuac and Instituto Tecnológico Autónomo de Mexico.

Corporate and mergers & acquisitions. Participation in the planning and implementation of local and international corporate transactions. Experience in complex merger and acquisitions transactions, shareholders´ agreements, joint ventures, cross-border corporate and investment deals, secured transactions, reorganizations, real estate transactions, investments and due diligence investigations.

Solid experience in local and cross-border hospitality structures and transactions, including management and franchise agreements.

RECOGNITIONS:

Best Lawyers International, recognized, as a leading lawyer in Mexico in the corporate and M&As practice.

Legal 500, recognized the real estate area.

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PROFESSIONAL EXPERIENCE:

Firm member since 1996; worked as an international consultant in the private sector lending arm of the Interamerican Development Bank Washington, D.C.

RECOGNITIONS:

Latin American Energy and Infrastructure Guide, recognized as a leading lawyer.

Chambers Latin America and Chambers Global, recognized as a leading lawyer in corporate, energy & natural resources, mergers & acquisitions, and real estate.

International Financial Law Review, recognized as one of Latin America´s leading lawyer in energy and infrastructure.

Who´s Who Legal of Mining Lawyers and Who´s Who Legal of Energy Lawyers, named world's leading lawyer.

Legal 500, prominent lawyer in energy and natural resources.

Best Lawyers, prominent lawyer in energy law.