

# “Doing Business in Mexico” Series

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## Part 2: Creating a Mexican Corporation

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Creating a new legal entity can be challenging in any country, especially in a foreign land. However, the process in Mexico is fairly straightforward and similar to the process in the United States, although it entails more bureaucracy and time. In Part 2 of our series “Doing Business in Mexico,” Amerris provides an overview of the process of creating a Mexican corporation, which is called a “sociedad anónima.” This article discusses various options available to those considering the Mexican market for business, but should not be interpreted as legal advice. There are many excellent resources in Mexico that can help guide you through this process and it is highly advisable that you consult one or more of them before proceeding. Amerris can assist you with connecting your company with the right resources.



I will begin with a brief discussion about the need to form a new entity. I have worked with American clients who were hesitant about taking that significant step and wanted to try to administer their Mexican operations using only their U.S.-based company. Under some circumstances this strategy can work. However, for most foreign companies it will be desirable and necessary to create a new entity. It will likely be necessary because many business transactions and accompanying fiscal obligations require a corporate entity. In addition, forming a Mexican company is desirable because it shows that you are serious about the Mexican market and that you are a legitimate business enterprise. Trust is important. It also provides much greater freedom in terms of executing contracts, working with suppliers, moving money, and establishing and maintaining a strong work force. Thus, Amerris recommends the formation of a Mexican corporate entity under most circumstances.

The Mexican Business Corporations General Law (“BCGL”) acknowledges six types of corporations whereby entities or persons may be grouped to pursue business activities<sup>1</sup>:

1. General partnership
2. Joint partnership
3. Limited partnership
4. **Limited liability stock corporation**
5. Joint stock partnership
6. Cooperative corporation.

Of the six types of corporations contained in the BCGL, one often favored by foreign companies is the limited-liability stock corporation (LLSC). The LLSC is very similar to a Limited Liability Company (LLC) in the U.S., provides similar legal protection, and is relatively simple to create and administer. The following are some of the important questions that a company must consider when forming an “LLSC”:

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<sup>1</sup> Lic. Jaime Eduardo Martínez Terrazas - Partner responsible for the Corporate Law Practice Group at Bufete de la Garza, S.C.

1. What company name would best suit your business?
2. Where will the company be located? (corporate address and fiscal address)
3. Will foreign workers be allowed?
4. Who will be the owners / shareholders?
5. Who will be on the Board of Directors and what powers will they be allowed?
6. Who will have power of attorney and what powers will they have?

Selecting a company name may not be as simple as it sounds. Trademarks apply in Mexico and there are rules to prevent the use of similar business names in the same, or similar, industry. Also, companies that want to use initials in the company name will find it very difficult to gain approval. So a company such as “Grupo XYZ de México” will likely not be approved because it’s based on initials. Also, it should be noted that the company name does not have to be in Spanish.

Regarding location, the corporate address is not as important as the fiscal address. The corporate address could be virtually anywhere in the country, but the fiscal address should be at or near the company’s primary base of operations in Mexico. The reason for this is that Mexico’s version of the Internal Revenue Service (SAT–Servicio de Administración Tributaria) expects a company to be located where it does business and will periodically drop by to verify that the business exists at the stated fiscal address. One short anecdote will drive home this point. I was once legal representative for a Mexican entity based in Mexico City. The company changed its fiscal address to the more northern city of San Luis Potosí and registered the change using SAT’s web-based system, as required. Unfortunately, this update didn’t find its way to SAT inspectors, so when they went to confirm the address in Mexico City they found the company was no longer there. The result? SAT froze the company’s bank accounts for 39 days. Imagine a Tier 1 supplier in the automotive industry, one that has to pay tens of thousands of pesos to suppliers virtually every day, not being able to use its bank accounts! This situation could have been avoided by personally following up with SAT after the web-based update was completed to ensure the change was properly recorded. Needless to say that this is one of the painful lessons Amerris would like to help you avoid when operating in Mexico.

Regarding company ownership and shareholders, the law allows foreign individuals to serve each role. It is not necessary to have a Mexican national within the ranks of ownership or any other part of the hierarchy. It is advisable, however, to have at least one individual physically in Mexico who possesses power of attorney to act on behalf of the company. That person can be foreign as well, but should have an official work visa or permanent residency in the country. Oftentimes a company’s accountant is granted limited power of attorney to represent the company on tax-related matters, and its attorney is granted limited powers for certain legal matters.

Once all of the information is in order, the project leader (usually a Mexican attorney) will move forward with the next steps to forming the new LLSC. These steps include:

1. Prepare and submit documents to a licensed notary.
2. Register company name.
3. Submit documents to **Secretary of Economy**.
4. Once approved, attorney will finalize Articles of Incorporation and register new entity with **Public Registry of Property and Commerce**.
5. Register with **SAT** as a new tax-paying entity (will receive taxpayer ID, electronic signature, and code to access electronic system).
6. Register with **Instituto Mexicano del Seguro Social (IMSS)** for social security purposes—required for Mexican employees.

The end result is that the new company will have a designation that looks something like this: “Opportunistic Company de México, S.A. de R.L. de C.V.” The initials mean: *Sociedad Anónima de Responsabilidad Limitada de Capital Variable*. In other words, the Company is an LLC with variable capital (which is optional).

If all goes smoothly the entire process should take no more than 90 days, and often much less. So with the proper assistance, you can have your Mexican corporation up and running in three months or less, allowing your company to begin taking advantage of this great “land of opportunity.”