

## Trading Vehicles: Overview (Mexico)

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Status: Law stated as of 01-Mar-2022 | Jurisdiction: Mexico

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A Practice Note outlining the key corporate features of different trading vehicles that are commonly used when setting up a business in Mexico. It includes an overview of sole traders (*comerciante personas físicas*) and the main forms of corporations and commercial partnerships; in particular, a *sociedad anónima de capital variable* (S.A. de C.V.) and a *sociedad de responsabilidad limitada de capital variable* (S. de R.L. de C.V.).

Most jurisdictions offer several alternative methods for establishing a business and engaging in local commercial activities. Common alternatives range from registering as a sole proprietor or trader, to forming or incorporating an entity with one or more owners and with a separate legal personality. Variations of trading vehicles exist across jurisdictions based on the development of local laws as influenced by local economic and political systems and cultural norms.

When entering a new market, whether by establishing a new subsidiary, joint venture, or through acquisition of an existing business, it is important to understand the differences among the trading vehicles available in the jurisdiction. Many trading vehicle types may appear similar to, or the same as, stock corporations, limited liability companies, or partnerships from an investor's home jurisdiction and seem distinguished by name only. Some differences, however, may exist in the details. Understanding the differences may help a foreign investor choose a trading vehicle that best suits its business purposes in the new jurisdiction.

This Note sets out the key corporate features of the main trading vehicles used for carrying out commercial activities in Mexico. It covers:

- Sole traders (*comerciante personas físicas*) (see Sole Trader).
- Stock corporations and other limited liability companies (see Types of Corporations).
- General and limited partnerships (see Types of Partnerships).
- Other special investment vehicles used in Mexico, such as a simplified stock corporation (*sociedad por acciones simplificadas* (SAS)) and an investment promotion corporation (*sociedad anónima promotora de inversión* (SAPI)) (see Other Trading Vehicles).

Charitable organizations and those set up mainly for not-for-profit purposes (such as foundations and associations) are outside the scope of this Note.

This Note does not consider tax-related issues arising from the choice of trading vehicle, or the differing tax treatment that applies to each type of vehicle.

Unless otherwise stated, a reference in this Note to:

- GLBO means the [Mexican General Law of Business Organizations](#) (*Ley General de Sociedades Mercantiles*).
- SML means the [Mexican Securities Market Law](#) (*Ley del Mercado de Valores*).

### Sole Trader

A sole trader (*comerciante persona física*) runs a business by themselves, makes all decisions affecting the business, and owns all the assets of the business personally. Small businesses often operate as sole traders because of the lack of legal formality and the low administrative costs versus a corporation or other legal entity in Mexico with commercial purposes.

A sole trader is personally liable for all debts and other liabilities of their business. A default by the sole trader on any obligation or debt executed directly for the business can be enforced or collected against the sole trader's own assets, regardless of whether the assets are part of the business for which the financing was obtained.

To limit their liability, it is possible for sole traders to set up as a company. However, this would be more costly and incurs additional formation and filing requirements.

### Key Features of a Sole Trader

The key features of a business operating as a sole trader are as follows:

- **No separate legal personality.** The business of a sole trader does not have legal personality and cannot own assets in its own name or grant security over them.
- **Unlimited financial liability.** The financial liability of a sole trader is unlimited.
- **One owner.** A business operated by a sole trader can only have one owner, although a sole trader can have employees.
- **No distinction between management and ownership of the business.** A sole trader owns all the assets of the business personally and has full control over running the business. They also make all the decisions affecting the business.
- **Minimal formation and ongoing filing requirements.** There is no requirement to adopt constitutional documents. However, the sole trader must register with the Mexican tax authorities as an individual responsible for the business. Depending on the type of business, the sole trader must also comply with local provisions for operation, safety, and environmental protection.

### Corporations and Partnerships: Overview

In Mexico, the term used for any kind of company, regardless of whether it is a stock corporation or a partnership, is *sociedad*. Most stock corporations and partnerships are regulated in Mexico by the GLBO. The SML provides for other forms of entities, such as public stock corporations with shares traded on a stock exchange (a *sociedad anónima bursátil* (SAB)) and investment promotion corporations (see *Sociedad por Anónima Promotora de Inversión* (SAPI)).

Several differences exist between stock corporations and partnerships, primarily because partnerships, as the name implies, are personal entities, while stock corporations are focused on the capital that is contributed. Additional distinctions include:

- **The level of participation.** The ownership in both types of companies is different and so are the formation documents evidencing it.
- **Members.** The rules for the number of partners or shareholders may vary.
- **Liability.** The liability of the shareholders or partners depends on the type of company.
- **Administration.** The administrative personnel are appointed in different ways.
- **Supervision.** It is not mandatory for both types of companies to have a company statutory examiner.

An S.A. de C.V. is the most common type of trading vehicle used in Mexico for any type of business.

### Types of Corporations

The main forms of Mexican corporations used for commercial ventures are:

- **A *sociedad anónima de capital variable* (S.A. de C.V.).** An S.A. de C.V. is a stock corporation with variable capital that is closest conceptually to a UK public limited company or a US corporation. Variable capital (*capital variable*) means that the company can adjust its issued and outstanding capital stock within a specified range without amending its corporate formation documents. For more information, see *Sociedad Anónima de Capital Variable* (S.A. de C.V.).
- **A *sociedad de responsabilidad limitada de capital variable* (S. de R.L. de C.V.).** An S. de R.L. de C.V. is a limited liability company with variable capital that is closest conceptually to a UK private limited company or a US limited liability company. Variable capital (*capital variable*) means that the company can adjust its issued and outstanding capital stock within a specified range without amending its corporate formation documents. For more information, see *Sociedad de Responsabilidad Limitada de Capital Variable* (S. de R.L. de C.V.).

### Types of Partnerships

The main forms of Mexican partnerships used for commercial ventures are:

- **A *sociedad en nombre colectivo* (SNC).** An SNC is a general partnership in which all partners have unlimited liability for the obligations of the partnership. For more information, see *Sociedad en Nombre Colectivo* (SNC).
- **A *sociedad en comandita simple* (SCS).** An SCS is a limited partnership with two different types of partners, one having unlimited liability for the obligations of the partnership and the other having limited liability in proportion to its capital contribution. For more information, see *Sociedad en Comandita Simple* (SCS).
- **A *sociedad en comandita por acciones* (S. en C. por A.).** An S. en C. por A. is a limited partnership by shares. The difference between an SCS and an S. en C. por A. is that an SCS is subject to the same governance rules as an S. de R.L. de C.V., and an S. en C. por A. by the same rules as an S.A. de C.V. For more information, see *Sociedad en Comandita por Acciones* (S. en C. por A.).

### Sociedad Anónima de Capital Variable (S.A. de C.V.)

An S.A. de C.V. is a stock corporation with variable capital incorporated exclusively by shareholders

(*accionistas*) whose obligations are limited to the amount of their paid shares. The capital stock of an S.A. de C.V. is represented by nominative share certificates that serve to evidence ownership, type of shares, amounts, and series. Share certificates are commercial instruments that are assignable by simple endorsement. The General Shareholders' Meeting of an S.A. de C.V. is the supreme authority of the corporation and approves and ratifies all acts and operations of the corporation as well as annual financial statements.

An S.A. de C.V. is the most common type of corporation used in Mexico for any type of business, with the benefit of limiting shareholder liabilities. It is a vehicle of easy incorporation and compliance. It is also possible to delimit the rights and obligations of different kinds of shareholders through its bylaws and through the execution of certain shareholder agreements.

### Key Features of an S.A. de C.V.

The key features of an S.A. de C.V. include:

- A separate legal personality, and it owns its assets.
- The minimum number of shareholders is two, and there is no maximum.
- There is no minimum capital requirement.
- Liabilities that may be incurred by the shareholders are limited to the capital and shares owned by each shareholder.
- The administration of the company is provided by a Director or a Board of Directors. The directors may be shareholders but do not need to be.
- The company cannot be listed and traded on a stock exchange but can be transformed into an SAB for such purposes.
- For the incorporation of an S.A. de C.V., a public deed must be executed with a notary public (*notario publico*) and with a company name approved by the Ministry of Foreign Affairs. Several other requirements must be met such as:
  - written bylaws specifying the corporate purpose, particularities of the company organization, types of shareholders (such as by series), and shareholder rights;
  - determining who will be the shareholders and the number of shares and their par value;
  - appointing the members of the Board of Directors or a Director;
  - appointing the company statutory examiner; and
  - appointing attorneys-in-fact of the corporation.

Once the public deed has been executed, the notary public will proceed to its registration in the Public

Registry of Commerce (*Registro Público de la Propiedad y de Comercio*). Registration is also required with the local tax authorities.

### Sociedad de Responsabilidad Limitada de Capital Variable (S. de R.L. de C.V.)

An S. de R.L. de C.V. is a limited liability company incorporated exclusively by partners (*socios*) who are only obliged to pay their contributions. Each partner may only have one equity interest in the capital whose value is equal to the amount of its contributions. Each partner only has one vote, regardless of the amount of its contributions. The General Partnership Meeting of an S. de R.L. de C.V. is the supreme authority of the corporation and approves and ratifies all acts and operations of the corporation, as well as annual financial statements. Its resolutions are carried out by the person it designates, or in the absence of designation, by one or more Managers.

An S. de R.L. de C.V. is another common type of corporation in Mexico used for any type of business, with the benefit of limiting partner liabilities. It is a vehicle of easy incorporation and compliance and is more flexible with fewer corporate formalities than an S.A. de C.V. Likewise, it is also possible to delimit the rights and obligations of different kinds of partners through its bylaws and through the execution of certain partnership agreements.

### Key Features of an S. de R.L. de C.V.

The key features of an S. de R.L. de C.V. include:

- A separate legal personality, and it owns its assets.
- The minimum number of partners is two, and the maximum number of partners is 50.
- There is no minimum capital requirement.
- Liabilities that may be incurred by the partners are limited to the capital and equity interests of the company itself.
- The administration of the company is provided by a Manager or a Board of Managers. The managers may be partners but do not need to be.
- The company cannot be listed and traded on a stock exchange but can be transformed into an SAB for such purposes.
- For the incorporation of a S. de R.L. de C.V., a public deed must be executed with a notary public (*notario publico*) and with a company name approved by the Ministry of Foreign Affairs. Several other requirements must be met such as:

- written bylaws specifying the corporate purpose, particularities of the company, partners, organization, and rights;
- determining who will be the partners and the par value of the equity interests;
- appointing the members of the Board of Managers or a Manager;
- appointing the company statutory examiner; and
- appointing attorneys-in-fact of the corporation.

Once the public deed has been executed, the notary public will proceed to its registration in the Public Registry of Commerce. Registration is also required with the local tax authorities.

### Sociedad en Nombre Colectivo (SNC)

An SNC is a partnership formed exclusively by partners who are jointly and severally liable for all the obligations of the partnership without limit.

Any person whose name appears or allows his or her name to appear, directly or indirectly, in the partnership name will be subject to unlimited, and joint and several, liability for all partnership obligations.

No partners, either directly or indirectly, may engage in the same business that constitutes the purpose of the company, nor be engaged in other companies that carry out such business, except with the consent of the other partners.

#### Key Features of an SNC

The key features of an SNC include:

- A separate legal personality, and it owns its assets.
- The SNC, like the rest of the partnerships regulated by the GLBO, is automatically considered to be commercial in nature and for profit.
- The general rule is that the partners of an SNC have unlimited, and joint and several, liability. However, the partners may stipulate that the liability of one or more of the partners can be limited to a certain portion of their contributions.
- There is no distinction between management and ownership of an SNC, and a Manager of the business may or may not be a partner. The partnership formation agreement may set forth specific rules for the management of the business, such as:
  - the administrator may be irremovable except by judicial resolution, gross negligence, fault, or inability;
  - when no Managers are appointed, all partners will be responsible for the administration;

- restrictions to the powers of the Managers; and
- the Manager must present reports to the partners semi-annually.

An SNC is less regulated than other trading vehicles in Mexico, but that has created a general lack of trust in the business community and, as a result, SNCs have been in disuse.

### Sociedad en Comandita Simple (SCS)

The SCS is a limited partnership formed by two kinds of partners:

- One or more partners who have unlimited, and joint and several, liability for the partnership's obligations, named *comanditados*.
- One or more limited partners who are only obliged to pay their contributions, named *comanditarios*.

Any person who makes his name appear or allows his name to appear in the partnership name will be subject to unlimited and joint and several liability for all partnership obligations.

#### Key Features of an SCS

The key features of an SCS include:

- A separate legal personality, and it owns its assets.
- The SCS, like the rest of the partnerships regulated by the GLBO, is automatically considered to be commercial in nature and for profit.
- Liability will depend on the type of partner, whether they are *comanditados* or *comanditarios*.
- The *comanditarios* partners may not perform any act of administration for the SCS, not even as attorney-in-fact of a Manager. Similar to an SNC, the partnership formation agreement may set forth specific rules for the management of the business, such as:
  - the administrator may be irremovable except by judicial resolution, gross negligence, fault, or inability;
  - when no Managers are appointed, all *comanditados* partners will be responsible for the administration;
  - restrictions to the powers of the Managers; and
  - the Manager must present reports to the partners semi-annually.

An SCS is less regulated than other trading vehicles in Mexico, but that has created a general lack of trust in the business community and, as a result, SCSs have been in disuse.

## Sociedad en Comandita por Acciones (S. en C. por A.)

The S. en C. por A. is a limited partnership by shares formed by two kinds of partners:

- One or more partners who have unlimited, and joint and several, liability for the corporate obligations, named *comanditados*.
- One or more limited partners who are only obliged to pay their contributions, named *comanditarios*.

The primary distinction between an SCS and an S. en C. por A. is that an SCS is subject to the same governance rules as an S. de R.L. de C.V. under the GLBO, while an S. en C. por A. is subject to the same governance rules as an S.A. de C.V.

The S. en C. por A. as a trading vehicle has fallen into disuse in Mexico. Although they are still regulated by the GLBO, they are not commonly used in domestic or foreign investments.

## Other Trading Vehicles

### Sociedad por Acciones Simplificadas (SAS)

An SAS is a form of simplified stock corporation recently regulated in Mexico under the GLBO. The difference between an SAS and any other company in Mexico is that an SAS only requires one shareholder for incorporation. The purpose of creating this type of company by the Mexican government was to encourage small businesses to incorporate in a formal manner.

The shareholder of a SAS must be an individual and will only be liable up to the amount of its contributions, which will be represented by shares.

Notwithstanding the intention behind the creation of the SAS, in practice they have not achieved the scope for which they were created.

### Key Features of an SAS

The key features of an SAS include:

- A separate legal personality, and it owns its assets.
- The minimum number of shareholders is one rather than two, and there is no maximum.
- The incorporation does not have a cost and can be carried out by completing an online form at the Ministry of Economy website without a notary.
- There are no minimum capital requirements.
- The company is administered by a Director or a Board of Directors. The members must be shareholders.
- The annual financial statements may be submitted online.

### Sociedad por Anónima Promotora de Inversión (SAPI)

A SAPI is a form of investment promotion corporation created in 2005 under the [Foreign Investment Law](#) (*Ley de Inversión Extranjera*) and regulated by the SML. A SAPI originally was designed as a special investment vehicle that could provide more rights to shareholders than an S.A. de C.V. Prior to various amendments to the GLBO, a SAPI was a vehicle type commonly used for business because it provided possibilities that the S.A. de C.V. did not. However, nowadays the SAPI and the S.A. de C.V. are regulated in practically the same terms except for the following:

- The SAPI may repurchase its own shares.
- The SAPI may limit the distribution of dividends.

### Main Differences Between an S.A. de C.V. and an S. de R.L. de C.V.

The following are the main differences between an S.A. de C.V. and an S. de R.L. de C.V.:

S.A. de C.V.	S. de R.L. de C.V.
Membership is represented by shares.	Membership is represented by equity interests.
Shareholders ( <i>accionistas</i> ) can be owners of one or more shares.	Partners ( <i>socios</i> ) can be owners of one equity interest.
At least two shareholders, with no maximum.	At least two partners and a maximum of 50 partners.
There is no minimum required capital.	There is no minimum required capital.
The administration is vested in a Director or Board of Directors.	The administration is vested in a Manager or Board of Managers.

## Trading Vehicles: Overview (Mexico)

S.A. de C.V.	S. de R.L. de C.V.
Shares are evidenced by share certificates that are negotiable and transferable.	Equity interests are registered in the company book and transferred through a sale and purchase agreement. Unlike share certificates, they are not assignable by simple endorsement.
Shareholder meetings are classified as either ordinary or extraordinary meetings.	The partnership meetings are not classified.
A company statutory examiner is mandatory.	A company statutory examiner is optional.
Governance is subject to formalities under the GLBO.	Governance is generally more flexible, such as the requirements for shareholder meetings and management.
Income of the S.A. de C.V. is taxed at the entity level as a corporation in Mexico.	Income of the S. de R.L. de C.V. may be taxed as a partnership and passed through to the owners.

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