

Establishing a Branch Office or Presence in Mexico

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A Practice Note discussing how a foreign company can establish a business presence in Mexico. It outlines the key features of a branch as an alternative to a subsidiary, including how to establish and close a branch, how each operates, and the applicable tax regime.

This Note sets out the different options for a foreign company wanting to establish a business presence in Mexico. As an alternative to incorporating a new subsidiary, acquiring an existing entity, or evaluating other methods of entering the Mexican market, a foreign company may establish a representative office or a branch in Mexico. The choice of business presence will usually depend on the type of activities that the foreign company wants to carry out in Mexico.

A representative office is usually set up when the activities to be performed are not deemed to generate income in Mexico (for example, research into or observation of the jurisdiction as a new potential market). If, instead, the activities to be carried out are expected to generate income, the natural alternative to a subsidiary would be a branch.

The option to establish a representative office (*oficina de representación*) is not currently available in Mexico. This Note describes the different types of business presence, focusing in particular on establishing a branch (*sucursal*) as an alternative to a subsidiary in Mexico, how each operates and the applicable tax regimes.

Unless otherwise stated, a reference in this Note to:

- Civil Code means the [Mexican Federal Civil Code](#) (*Código Civil Federal*) and its correlative provisions for the Civil Codes for the States of Mexico.
- Commercial Code means the [Mexican Code of Commerce](#) (*Código de Comercio*).
- Foreign Investment Law means the [Mexican Foreign Investment Law](#) (*Ley de Inversiones Extranjeras*).
- GLBO means the [Mexican General Law of Business Organizations](#) (*Ley General de Sociedades Mercantiles*).
- Income Tax Law means the [Mexican Income Tax Law](#) (*Ley del Impuesto Sobre la Renta*).

Establishing a Presence in Mexico

A foreign company has various options for establishing a business presence in Mexico. It can:

- Set up a branch (see Branch).
- Incorporate, acquire, or invest in a subsidiary company in Mexico (see Subsidiary).
- Appoint an agent, a distributor, or a franchisee (see Agent, Distributor, or Franchisee).
- Co-operate with a local partner and set up a joint venture (see Joint Venture).

For a discussion of the factors a foreign company might consider when choosing between a branch or a subsidiary, see [Choosing Between a Branch and a Subsidiary](#).

Branch

A branch (*sucursal*) is an office, shop, or business of a foreign company that will operate in Mexico to carry out the business of the foreign company and generate income. Branches do not have a legal personality in Mexico separate from the parent company that establishes the branch.

Generally, foreign investors do not choose branches for tax reasons because branches create a permanent establishment for the foreign investor (see [Choosing Between a Branch and a Subsidiary](#)).

Requirements for Establishing a Branch in Mexico

Branch offices in Mexico must be authorized by the Ministry of Economy (*Secretaría de Economía*). To apply for authorization, a foreign investor must file

and register the following documents with the Public Registry of Commerce (*Registro Público de Comercio*):

- The articles of incorporation and by-laws of the foreign company (translated into Spanish, notarized and with an apostille attached) (Article 24, Commercial Code; Article 2521, GLBO).
- Documents certifying the power of attorney of its “attorney in fact” representing the foreign company.
- A description of the economic activities that the branch will carry out in Mexico.

The foreign investor must also pay the applicable governmental fees.

Foreign companies must also register the branch with the Foreign Investments Registry (*Registro Nacional de Inversiones Extranjeras*). There are specific registration requirements for certain commercial activities of foreign companies such as agencies and subsidiaries under Article 17 of the Foreign Investment Law.

More information regarding registration can be found at the [Foreign Investments Registry](#) website (user registration required).

Executing Contracts

For all legal purposes, the branch acts on behalf of the parent company and cannot execute contracts in its own name. Because a branch is not considered a separate legal entity, any liability arising from the branch office will always accrue to the foreign company.

Accounting Books and Records

Under the Commercial Code, a branch must keep its accounting books and records for ten years. Under the Income Tax Law, it must keep accounting information for five years, which is the period that can be audited.

Closing a Branch

To liquidate or dissolve a branch, whatever requirements apply in the branch’s parent country will apply in Mexico (Article 2,736, Civil Code). It is also necessary to give notice to the Ministry of Economy.

Alternatives to a Branch

Foreign companies have other options for establishing a business presence in Mexico.

Subsidiary

A foreign company can incorporate or acquire a subsidiary company (*subsidiaria*) in Mexico. In Mexico, the term used for any kind of company, regardless of

whether it is a stock corporation or a partnership, is *sociedad*.

The GLBO provides for various forms of entities, including:

- Stock corporation (*sociedad anónima*) (S.A.).
- Limited liability company (*sociedad de responsabilidad limitada*) (S. de R.L.).

The [Mexican Securities Market Law](#) (*Ley del Mercado de Valores*) (SML) provides for other forms of entities, including:

- Investment promotion stock corporation (*sociedad anónima promotora de inversión*) (SAPI).
- Public investment promotion stock corporation (*sociedad anónima promotora de inversión bursátil*) (SAPIB).
- Public stock corporation (*sociedad anónima bursátil*) (SAB).

However, it is highly recommended to use one of the entities in the following list. These forms limit the liability of the investors to payment of their capital contributions:

- **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.
- **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. The S. de R.L. de C.V. is the preferred type of subsidiary for a foreign company.
- **A sociedad anónima promotora de inversión de capital variable (SAPI de C.V.).** A SAPI de C.V. is a form of investment promotion corporation with variable capital created in 2005 under the Foreign Investment Law 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. Uniquely, it allows its shareholders to have different rights depending on whether they have an active or passive investment in the company. This type of entity promotes the investment in the company.

Owner liability is unlimited for branches and other forms of entities regulated by the GLBO.

For further information on the types of companies commonly established in Mexico, see [Practice Note, Trading Vehicles: Overview \(Mexico\)](#).

Incorporating a Company in Mexico

Incorporating an S.A. or an S. de R.L. is a relatively simple procedure that includes the following steps:

- Obtain a permit from the Ministry of Economy to reserve the corporate name.
- Shareholders or members of the company authorize the by-laws and articles of incorporation by executing a public deed before a Mexican notary public (*notario publico*). The public deed can be executed by:
 - an authorized representative; or
 - an attorney in fact with a power-of-attorney. The power of attorney must be translated into Spanish, notarized, have an apostille attached to it and formalized before a Mexican notary public.

The incorporation deed contains:

- Basic provisions relating to the organization and management of the entity.
- The appointment of the board of directors.
- The statutory examiner (normally a partner of an external auditing firm).
- The by-laws.

The notary will issue various copies of the deed. The investor will use these to:

- Obtain the newly formed entity's Tax ID from the Ministry of Finance and Public Credit (SHCP).
- Register with the Foreign Investment Registry.
- Register with the Public Registry of Commerce.

It is important to request the Tax ID from the SHCP immediately after creating the entity to avoid delays to the start of operations. Among other things, a Tax ID is necessary to open bank accounts and to print official invoices. The notary public can request the Tax ID of the company and it can be ready on the same date the entity is created.

Agent, Distributor, or Franchisee

A foreign company can also appoint an agent (*representante de venta*), a distributor (*distribuidor*), or a franchisee (*franquiciatario*) in Mexico. In these cases, the foreign company does not have a legal presence in Mexico and most of the legal risks are borne by the agent, distributor, or franchisee.

Under Mexican law, special rules apply to agents, distributors, and franchisees. For example, certain provisions of Mexico's [Federal Law of Economic Competition](#) (*Ley Federal de Competencia Económica*) apply to distribution agreements, and certain provisions of Mexico's [Federal Law for the Protection of Industrial](#)

[Property](#) (*Ley Federal de Protección a la Propiedad Industrial*) apply to franchise agreements, detailed discussions of which are outside the scope of this Note.

For more information, see [Country Q&A, Distribution Q&A: Mexico](#) and [Franchising Q&A: Mexico](#).

Joint Venture

A foreign company can also co-operate with a local partner and set up a joint venture (*alianza estratégica*). The most common forms of joint ventures in Mexico are:

- Contractual joint ventures (*Asociación en Participación*). These are contractual arrangements between two or more parties. They do not require the creation or registration of a new legal entity.
- Corporate joint ventures, which do involve the creation of a new legal entity.

Joint ventures are outside the scope of this Practice Note. For more information on joint ventures in Mexico, see [Country Q&A, Joint Ventures in Mexico: Overview](#).

Choosing Between a Branch and a Subsidiary

The choice between a branch or subsidiary depends on the scope of the foreign entity's activities in Mexico.

Although setting up and maintaining a branch is less expensive and requires fewer filing requirements, it is often advisable to incorporate a Mexican subsidiary rather than open a branch office. Branches do not have a separate legal personality and local authorities and third parties are unused to dealing with this kind of entity.

All employers are subject to the [Mexican Federal Labor Law](#) (*Ley Federal del Trabajo*) (FLL). The impact of Mexican labor laws is also a factor that should be considered when establishing a business presence in Mexico (see [Employment Matters](#)).

Additionally, a branch which operates and generates income in Mexico will be subject to the same tax rate as a subsidiary (see [Taxation](#)). Under the Income Tax Law, the Mexican government taxes resident corporations at 30%, based on their net taxable income. The tax authorities treat non-resident entities who carry out business through a branch in Mexico as permanent establishments. This means that branches must pay income tax at 30% on all income attributable to the branch (see [Taxation](#)).

Employment Matters

The following discussion applies to both branches and subsidiaries established in Mexico.

Labor Relations

Before setting up a Mexican business venture, foreign investors must consider the consequences of the FLL including:

- Compensation requirements.
- Employment-related contributions and taxes.

The FLL regulates:

- The relationship between employer and employee.
- The relationship between unions and employees.
- The relationship between unions and employers.
- The activities of labor authorities.

Employees Share in Profits

Under the FLL, Mexican employees have a right to share in the profits of their company. The company's yearly profit is determined by its taxable income under the rules of the Income Tax Law. Collectively, the employees' share is ten per cent of the company's income, before taxes, capped to an amount equal to three months of salary paid per year. All employees have the right to this share of profit, except for the top executive of a company and "trust employees" (*empleados de confianza*) (defined in Article 9 of the FLL as employees who carry out management, inspection, supervision, or audit activities).

Some companies are exempt from this rule. Among others, these include newly incorporated entities:

- During their first year of operations.
- Dedicated to the production of a new product, during their first two years of operations.
- Dedicated to an extractive industry during the exploration period.

Collective Labor Relationships

With the approval of the Ministry of Labor and Social Welfare, employees and employers have the right to form unions (*sindicatos*) and professional associations. A union is an association of employees or employers formed to protect their respective interests and can associate with other unions to form federations and confederations. Unions execute collective labor agreements.

Social Security

The Social Security Law regulates participation in the federal social benefit programs through the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*) (IMSS). It covers employers, employees, and the government. It guarantees the human rights of health, medical attention, and social services for the purpose of individual and collective wellbeing.

Social security benefits are divided into mandatory and voluntary programs. Mandatory programs provide basic social security benefits for employees. Employers have the option to provide voluntary programs.

An employer's most important obligations are to:

- Register each employee with the Mexican Social Security Institute.
- Contribute to mandatory federal social security programs.
- Withhold an employee's social security contribution when necessary.
- Send an employee's contributions to the appropriate account.

Housing Fund

The Workers' Housing Fund Law regulates participation in the Mexican Workers' Housing Fund Institute (INFONAVIT) for employers, employees, and the government. Employers pay a set percentage of an employee's integrated salary to INFONAVIT. INFONAVIT provides finance to employees to buy, construct or repair a home, or to pay off housing loans.

Taxation

The following discussion applies both to branches and subsidiaries.

The Mexican tax system includes federal, state, and municipal taxes. Taxation is both direct and indirect.

The most important federal taxes in Mexico are:

- **Income tax.** Under the Income Tax Law, the Mexican government taxes resident corporations at 30%, based on their net taxable income. The net taxable income is the aggregate income minus all authorized deductions and profits paid to the company's employees during the year.
- **Value-added tax (VAT).** This is an indirect tax payable on:
 - rendering independent services;
 - sale of property;
 - leasing property in Mexico;
 - the importation of goods or services.

The general rate of VAT is 16%. Activities carried out within the border region are taxed at 11%. A 0% rate applies in other, specific cases (mostly export) established in the [Mexican Value Added Tax Law](#) (*Ley del Impuesto al Valor Agregado*).

To operate legally, all Mexican entities must have a tax representative (an individual) who is a registered

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Mexican tax resident. This individual must have the authority to represent the entity before the Mexican tax authorities. All Mexican companies, whether operating or not, must file monthly tax returns and upload certain parts of their monthly accounting records to the [Tax Authorities website](#) (user registration required). It is advisable to engage an accounting firm to assist with tax ID codes and passwords and carrying out the initial filings.

The tax authorities treat non-resident entities who carry out business through a branch in Mexico as permanent establishments. This means that branches must pay

income tax at 30% on all income attributable to the branch (taxable income less authorized deductions).

Profits sent by the branch to the head office are taxable if they are not distributed from the branch's after-tax net profit account (CUFIN). In case the distribution of profits is not made from the CUFIN account, the branch must pay income tax at 30%.

Reimbursements of capital made by the branch to its head office are subject to the capital reduction rules in the Income Tax Law. In general terms, reimbursements which entail a distribution of profits are taxable at 30%, unless paid from the branch's CUFIN account.

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