Trading Vehicles: Overview (Mexico)

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A Practice Note providing an overview of the key corporate features of various trading vehicles used to establish a commercial presence in Mexico. This Practice Note outlines the distinct characteristics of a sole trader (*comerciante personas físicas*), alongside key corporations and partnerships regulated under the General Law of Business Organizations (GLBO) (*Ley General de Sociedades Mercantiles*) and the Securities Market Law (SML) (*Ley del Mercado de Valores*). It explores the main differences between a variable capital stock corporation (*sociedad anónima de capital variable*) (S.A. de C.V.) and a variable capital limited liability company (*sociedad de responsabilidad limitada de capital variable*) (S. de R.L. de C.V.), focusing on liability, management, and incorporation requirements. Additionally, this Practice Note covers other specialized entities, including the simplified stock corporation (*sociedad por acciones simplificadas*) (SAS) and the investment promotion stock corporation (*sociedad anónima promotora de inversión)* (SAPI), to guide foreign investors in choosing the most appropriate structure for their business goals in Mexico.

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 stock corporation (*sociedad anónima promotora de inversión* (SAPI)) (see Other Trading Vehicles).

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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. For information on establishing a business presence in Mexico through a branch office, see Practice Note, Establishing a Branch Office or Presence in Mexico.

Unless otherwise stated, a reference in this Note to:

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

Sole Trader

A sole trader 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 is more costly and incurs additional formation and filing requirements. For example, a second individual or company is needed to incorporate a company since commercial entities in Mexico require at least two partners (*socios*) or shareholders (*accionistas*).

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.

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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, *sociedad* is the term used for any kind of company, regardless of whether it is a stock corporation or partnership. Most stock corporations and partnerships are regulated in Mexico by the GLBO. The SML provides for other forms of entities, such as:

- A public stock corporation (*sociedad anónima bursátil*) (SAB) with shares traded on a stock exchange.
- A public investment promotion stock corporation (*sociedad anónima promotora de inversion bursátil*) (SAPIB).
- A SAPI (see *Sociedad Anónima Promotora de Inversión* (SAPI)).

Several differences exist between stock corporations and partnerships, primarily because partnerships 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 their formation documents.
- 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. Whether a company statutory examiner is mandatory depends on the type of company or partnership. For example, it is mandatory for an S.A. de C.V. and an S. en C. por A., but not for an S. de R.L. de C.V., an SNC, or an SCS.

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

Types of Corporations

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

- A variable capital stock corporation (*sociedad anónima de capital variable*) (S.A. de C.V.), which is conceptually closest to a UK public limited company or US corporation (see *Sociedad Anónima de Capital Variable* (S.A. de C.V.).

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- A variable capital limited liability company (*sociedad de responsabilidad limitada de capital variable*) (S. de R.L. de C.V.), which is closest conceptually to a UK private limited company or US limited liability company (see *Sociedad de Responsabilidad Limitada de Capital Variable* (S. de R.L. de C.V.)).

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.

Types of Partnerships

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

- A general partnership (*sociedad en nombre colectivo*) (SNC) (see *Sociedad en Nombre Colectivo* (SNC)).
- A limited partnership (*sociedad en comandita simple*) (SCS), which is subject to the same governance rules as an S. de R.L. de C.V. (see *Sociedad en Comandita Simple* (SCS)).
- A partnership limited by shares (*sociedad en comandita por acciones*) (S. en C. por A.), which is governed by the same rules as an S.A. de C.V. (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 incorporated exclusively by shareholders 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. To exercise the corporate rights attached to the shares, the shareholder must be registered in the company's share registry. 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 easy to incorporate and has simple compliance requirements. It is also possible to delimit the rights and obligations of different kinds of shareholders through its bylaws and the execution of 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. An S.A. de C.V. owns its assets.
- A two shareholder minimum.
- No maximum shareholder limit.

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- No minimum capital requirement.
- Shareholder liability is limited to the capital contributed to the company and the shares each shareholder owns.
- A director or board of directors that administers the company. The directors can 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 SAPIB or SAB for this purpose.

Incorporating an S.A. de C.V. requires:

- Executing a public deed with a notary public (*notario publico*) or public commercial broker (*corredor público*) with a company name approved by the Ministry of Economy.
- Writing bylaws specifying the corporate purpose, particularities of the company organization, types of shareholders (such as by series of shares), and shareholder rights.
- Determining the shareholders and number of shares, the shares' par value, and the series the shares belong to.
- Appointing the members of the board of directors or a sole director.
- Appointing the company statutory examiner.
- Appointing attorneys-in-fact of the corporation.
- Providing the notary public or public commercial broker with the documents required by tax laws to identify the company's ultimate beneficial owner (*beneficiarios controlador*) (and maintaining those documents within the company's records).

After execution, the notary public or public commercial broker registers the public deed in the Public Registry of Commerce (*Registro Público de la Propiedad y de Comercio*). Registration is also required with the local tax authorities. The individual or group of individuals identified as the controlling beneficial owner(s) (*beneficiario controlador*) must be registered through the digital portal of the Mexican Ministry of Economy in compliance with the Anti-Money Laundering Federal Law (*Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita*).

A company with foreign investment under the Foreign Investment Law (*Ley de Inversión Extranjera*) must be registered with the National Foreign Investment Registry (*Registro Nacional de Inversiones Extranjeras*). Additional registration can be required depending on the company's activities, such as:

- The National Importers Registry (*Registro Nacional de Importadores*).
- The Federal Road Transportation Registry (*Registro de Autotransporte Federal*).

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- The National Banking Commission (*Comisión Nacional Bancaria y de Valores*).

These registrations can take place after the company is incorporated. However, registration must usually be complete before the company starts operations.

Notably, only an S.A. de C.V. can obtain certain licenses and authorizations related to financial operations, such as becoming a bank, brokerage firm, popular financial company (*Sociedad Financiera Popular*) (*SOFIPO*), insurance and bonding company, mutual fund operator (*Sociedad Operadoras de Fondos de Inversión*), retirement fund administrator, financial group holding company (*Sociedad Controladoras de Grupos Financieros*), or financial technology institution.

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 that must only pay their contributions. Each partner has one equity interest in the capital, the value of which is equal to the amount of the partner's contributions, unless the formation documents give the partner an equity interest with different rights, which would allow the partner to have two or more equity interests.

Each partner has one vote, regardless of the partner's contributed amount, unless the formation documents allow otherwise. A general partners 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 and annual financial statements. Its resolutions are carried out by the person it designates, or absent a designation, 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 easily incorporated and has simple compliance requirements. It is more flexible than an S.A. de C.V. with fewer corporate formalities. It is also possible to delimit the rights and obligations of different kinds of partners through its bylaws and 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. An S. de R.L. de C.V. owns its assets.
- A two partner minimum.
- A maximum of 50 partners.
- No minimum capital requirement.
- Partners' liability is limited to the capital contributed to the company and equity interests of the company.
- A manager or a board of managers that administers the company. The managers can be partners but do not need to be.

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- The company cannot be listed and traded on a stock exchange but can be transformed into an SAPIB or SAB for this purpose.

Incorporating an S. de R.L. de C.V. requires:

- Executing a public deed with a notary public or public commercial broker with a company name approved by the Ministry of Economy.
- Writing bylaws specifying the corporate purpose, particularities of the company, partners, organization, and rights.
- Determining the partners, par value of the equity interests, and different rights of equity interests.
- Appointing the members of the board of managers or a manager.
- Appointing the company statutory examiner, if desirable.
- Appointing attorneys-in-fact of the corporation.
- Providing the notary public or public commercial broker with the documents required by tax laws to identify the company's ultimate beneficial owner.

After execution, the notary public or public commercial broker registers the public deed in the Public Registry of Commerce. Registration is also required with the local tax authorities. The individual or group of individuals identified as the controlling beneficial owners must be registered through the digital portal of the Mexican Ministry of Economy in compliance with the Anti-Money Laundering Federal Law.

A company with foreign investment under the Foreign Investment Law must be registered with the National Foreign Investment Registry. Additional registration can be required depending on the company's activities, including:

- The National Importers Registry.
- The Federal Road Transportation Registry.

These registrations can take place after the company is incorporated. However, registration must usually be complete before the company starts operations.

Due to recent reforms that prohibit outsourcing schemes, a company that intends to provide specialized services must also register with the Registry of Specialized Services Providers of the Ministry of Labor. Failing to register can result in significant liability.

Notably, an S. de R.L. de C.V. has a particular use for subsidiaries of US companies. The US "check-the-box" tax regime allows taxpayers to elect a foreign entity's tax treatment by filing Internal Revenue Service Form 8832, which outlines predefined categories of foreign entities eligible to choose a flexible tax classification. Under this form:

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- An S. de R.L. de C.V. with multiple partners can elect to be treated as a partnership for tax purposes, as it is a foreign entity where all members have limited liability. Partnership classification allows the US taxpayer to consolidate the entity's income with their own and access tax benefits, such as the ability to directly claim deductions.

- An S.A. de C.V. is not eligible to be treated as fiscally transparent, as the form itself excludes it by classifying it as a per se corporation.

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. A person whose name appears, or who allows their name to appear, directly or indirectly, in the partnership name is subject to unlimited joint and several liability for all partnership obligations.

No partners can directly or indirectly engage in the same business that is the purpose of the company or be engaged in other companies that carry out the same business without the other partners' consent.

Key Features of an SNC

The key features of an SNC include:

- A separate legal personality. An SNC owns its assets.

- Like the rest of the partnerships the GLBO regulates, an SNC is automatically considered commercial in nature and for profit.

- Generally, unlimited joint and several liability. However, the partners can agree to limit the liability of one or more partners to a certain portion of their contributions.

- No distinction between management and ownership. A manager of the business can be a partner. The partnership formation agreement can set out specific rules for managing the business, such as:
    - limiting the administrator's removal to judicial resolution, gross negligence, fault, or inability;
    - making all partners responsible for administration when no manager is appointed;
    - restricting the managers' powers; and
    - requiring the manager to present semi-annual reports to the partners.

An SNC is less regulated than other trading vehicles in Mexico, which has created a general lack of trust in the business community. As a result, SNCs are infrequently used.

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Sociedad en Comandita Simple (SCS)

The SCS is a limited partnership where one or more:

- Partners have unlimited joint and several liability for the partnership's obligations, known as *comanditados*.
- Limited partners must only pay their contributions, known as *comanditarios*.

A person whose name appears, or who allows their name to appear, in the partnership name is subject to unlimited joint and several liability for all partnership obligations.

Key Features of an SCS

The key features of an SCS include:

- A separate legal personality. An SCS owns its assets.
- Like the rest of the partnerships the GLBO regulates, an SCS is automatically considered commercial in nature and for profit.
- Liability depends on whether the partners are *comanditados* or *comanditarios*.
- The *comanditarios* partners cannot perform acts of administration for the SCS, including as an attorney-in-fact of a manager.
- As with an SNC, the partnership formation agreement can set specific rules for managing the business, such as:
    - limiting the administrator's removal to judicial resolution, gross negligence, fault, or inability;
    - making all *comanditados* responsible for the administration when no managers are appointed;
    - restricting the managers' powers; and
    - requiring the manager to present semi-annual reports to the partners.

An SCS is less regulated than other trading vehicles in Mexico, which has created a general lack of trust in the business community. As a result, SCSs are infrequently used.

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

The S. en C. por A. is a limited partnership by shares formed by one or more:

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- *Comanditados*.
- *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.
- An S. en C. por A. is subject to the same governance rules as an S.A. de C.V.

As a trading vehicle, the S. en C. por A. has fallen into disuse in Mexico. Although still regulated by the GLBO, it is 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 that is regulated under the GLBO. An SAS, unlike any other company in Mexico, only requires one shareholder for incorporation. Mexico created the SAS to encourage small businesses to formally incorporate.

An SAS shareholder must be an individual and is only liable up to the contributed amount, which will be represented by shares. Although the SAS was created to promote the incorporation of small businesses, in practice, it has not fully achieved this aim.

Key Features of an SAS

The key features of an SAS include:

- A separate legal personality. An SAS owns its assets.
- All shareholders must be individuals.
- A minimum of one shareholder.
- No maximum limit of shareholders.
- No incorporation costs.
- Incorporation can be carried out by completing a form on the Ministry of Economy website without a notary or commercial broker.

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- No minimum capital requirements.
- A director or board of directors that administers the company.
- The members must be shareholders.
- The annual financial statements can be submitted online.
- A limit on annual income. A company that exceeds the annual income limit must be transformed into another trading vehicle.

Sociedad Anónima Promotora de Inversión (SAPI)

An SAPI is an investment promotion corporation regulated by the SML. SAPIs were originally designed as special investment vehicles that could provide more rights to shareholders than an S.A. de C.V. Prior to various GLBO amendments, SAPIs were commonly used for business, as they provided possibilities that the S.A. de C.V. did not. However, the SAPI and S.A. de C.V. are now regulated under practically the same terms, except that:

- An SAPI can repurchase its own shares.
- An SAPI can limit dividend distributions.
- In a SAPI, shareholders' minority rights require a lower ownership percentage to be exercised.

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

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

S.A. de C.V.	S. de R.L. de C.V.
Shares represent membership.	Equity interests represent membership.
Shareholders can own more than one share.	Partners can only own one equity interest, except for equity interests with different rights.
Requires at least two shareholders.	Requires at least two partners.
No maximum shareholder limit.	Limited to 50 partners.
No minimum required capital.	No minimum required capital.

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The administration is vested in a sole director or board of directors.	The administration is vested in a sole manager or board of managers.
Shares are evidenced by share certificates that are negotiable, transferable, and registered in the company's share registry.	Equity interests are registered in the company book, transferred through a sale and purchase agreement, and not assignable by simple endorsement.
Shareholder meetings are classified as ordinary or extraordinary meetings.	Partnership meetings are not classified.
Requires a company statutory examiner.	A company statutory examiner is optional.
Governance is subject to GLBO formalities.	Generally, governance is more flexible, such as the requirements for partner meetings and management.
Income is taxed at the entity level as a corporation in Mexico.	Income can be taxed as a partnership and passed through to the owners.
Licenses and authorizations to do certain financial operations can be obtained as an S.A.	Licenses and authorizations to do certain financial operations cannot be obtained as an S. de R.L.

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