

# MEXICAN COMPANIES WITH FOREIGN PARTNERS

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## What type of entity can be incorporated in Mexico?

If you wish to start a business in Mexico, there are different options with which you can create different companies. The Mexican General Law of Commercial Companies recognizes seven types of corporations. The most common and recommended for foreign partners are the Sociedad Anónima, which is similar to a Limited company, and Sociedad de Responsabilidad Limitada, similar to a Limited Liability Partnership. We recommend these types of corporations because, although there are some differences between them, the monetary obligation of the partners is limited to the number of their contributions.

## What type of activity can be carried out?

The Ministry of Economy regulates Foreign Investment in Mexico. There are reserved and restricted activities for foreigners; the reserved activities are those that are of exclusive exploitation to the Mexican State and the restricted ones are those in which a maximum percentage of participation of foreign investment is permitted or, if exceeding, an authorization from the State is required. Although these limitations exist for foreigners, the activities to which they apply are limited and are of specific commercial sectors such as firearms, transportation, education, nuclear energy, exploration or exploitation of oil, among others.<sup>1</sup> Outside of these areas, foreigners have the freedom to participate in trade without any problem.

## Mexican Company Formation

First, it is necessary to request authorization and availability of the desired name and purpose of the company before the Ministry of Economy. This allows maintaining the certainty that no other corporation will exist within Mexico with the same name and purpose.<sup>2</sup> With this process, a unique code is issued that will be included in the Deed of Incorporation, a document that will be explained later. This task is sometimes carried out by the Notary Public who carries out the protocolization process.

<sup>1</sup> For a complete list of activities review the Foreign Investment Law in its articles 5, 6, 7 and 8.

<sup>2</sup> It is important to emphasize that the name is not equivalent to the brand, trade name or trademark registration.

Which brings us to the second step, the drafting and elaboration of the Deed of Incorporation of the company. This document is the most important one in any corporation since it establishes all the guidelines and identification details of the company, i.e. the name, company's purpose, address, duration and nationality of its shareholders, and the rules of how the company will be governed, i.e. its administration, ordinary and extraordinary shareholders' meetings. It is necessary that the Deed of Incorporation include all the relevant points for the corporation since, in the event of any conflict, problem or even the distribution of dividends, the guidelines established in it must be followed. To be sure that this document is correctly written, we recommend consulting with a lawyer. The Deed of Incorporation must be accepted and signed before a Notary Public. This process is known as the protocolization of the Constitutive Act.

Finally, the registration of the company must be done before the different government agencies, which are the Public Registry of Commerce, which varies depending on the state in which the incorporation of the company was made, the Ministry of Finance and Public Credit, more specifically in the Tax Administration System and, finally, if it has foreign partners, in the National Registry of Foreign Investments. This affects the company as duly incorporated before third parties and can start operations.

It is important to understand that the process of hiring foreigners is completely different from the one explained here.

In Scornik Gerstein we are prepared to support you with the necessary process for the incorporation of companies in Mexico, as well as with any doubts and management that may arise during the process.

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