

SETTING UP A BUSINESS IN MEXICO

Legal Framework



This document provides an overview of the essential steps involved in establishing a business in Mexico as a foreign investor. It addresses key requirements under the Mexican Investment Law (Ley de Inversión Extranjera), specifically Articles 4 and 7, which outline the sectors where foreign participation is unrestricted, limited, or requires government authorization. The information is presented clearly and accessible to facilitate understanding.

Please note that this guide is intended as a general reference. For advice tailored to your specific needs, it is strongly recommended to consult a qualified legal or financial advisor.

I. Legal Framework for International Investments: Key Considerations

a. Mexican Investment Law Overview

The Mexican Investment Law (Ley de Inversión Extranjera) serves as the main legal framework regulating foreign investment in Mexico. Its objective is to set forth rules for directing foreign investment into the country while ensuring that such investments contribute to national development. Furthermore, the law establishes specific restrictions to protect industries deemed essential to Mexico's sovereignty ¹.

i. Article 4

Article 4 delineates sectors where foreign investment is unrestricted, granting foreign investors full ownership rights and allowing them to establish and operate businesses without the need for local partnerships. These sectors include manufacturing, where foreign entities can invest in various processes, thereby contributing to job creation and technological advancement; services, which encompass a wide range of industries such as professional services, tourism, and logistics; and technology, which actively welcomes foreign capital to foster innovation and facilitate knowledge transfer. This unrestricted access encourages international companies to invest in Mexico, leveraging the country's strategic location and skilled workforce.

1. Gobierno de México. (1993). *Ley de Inversión Extranjera*. Available at <https://www.diputados.gob.mx/LeyesBiblio/pdf/LIE.pdf>

Updates on Investment Restrictions

In recent years, the Mexican government has gradually opened additional sectors to foreign investment. Notably, the 2013 Energy Reform introduced opportunities for foreign participation in oil and gas exploration. Although direct ownership of natural resources remains restricted, foreign investors can now engage in partnerships with Mexican companies under specific regulatory conditions, allowing them to play a more significant role in the energy sector.

ii. Article 7

In contrast, Article 7 outlines sectors where foreign investment is either limited or requires special authorization from the government to protect national interests and maintain control over essential resources and services. Key sectors addressed in this article include energy, where foreign investment—particularly in oil and gas exploration and production—is restricted to safeguard national sovereignty over natural resources. However, substantial reforms have taken place in the telecommunications sector. Historically, foreign ownership was capped, but recent regulatory changes now allow foreign investors to own up to 100% of certain telecommunications companies. This shift is part of Mexico's broader effort to modernize infrastructure and attract foreign capital, while safeguarding critical industries. Additionally, it imposes limitations on foreign investment in specific areas of real estate, particularly in coastal regions and border zones, where foreigners may need special permits to acquire property. Despite reforms in other sectors, these restrictions on real estate ownership remain unchanged. Nevertheless, foreign investors can acquire property in these zones through real estate trusts known as fideicomisos, providing a legal avenue for foreign participation in Mexico's real estate market.

b. Regulations for Foreign Investors

Understanding the regulatory landscape is crucial for foreign investors aiming to establish a presence in Mexico, especially in relation to ownership restrictions, participation limits, and industries that require prior government approval. Certain sectors impose limitations on foreign ownership to safeguard national interests, necessitating careful navigation to ensure compliance with local laws. Additionally, some industries demand government authorization, which often involves extensive documentation and adherence to specific criteria. By recognizing these regulations, foreign investors can strategically plan their investments, mitigate legal risks, and improve their prospects for long-term success in the Mexican market.

II. Starting a Company in Mexico: A Foreigner's Guide

Setting up a business in Mexico as a foreign investor requires navigating the local legal and regulatory framework. This process involves several key steps, including selecting the appropriate legal structure, preparing the necessary documentation, and registering with the relevant governmental authorities. Below is a summarized overview of the process:

1. Business Registration Process

i. Selecting the Right Legal Structure

One of the most critical steps when starting a business in Mexico is choosing the appropriate legal structure, as it defines the business's legal and financial responsibilities.

Foreign investors can choose from several types of entities, including:

- **Sociedad Anónima (S.A.):** Similar to a corporation, an S.A. requires a minimum of two shareholders and is commonly used for larger businesses. It offers limited liability protection to its shareholders.
 - **Sociedad de Responsabilidad Limitada (S. de R.L.):** Comparable to a limited liability company (LLC), this structure is often favored by smaller businesses. It provides flexibility in management while limiting the liability of its members.
 - **Sociedad por Acciones Simplificadas (S.A.S.):** A simplified business structure ideal for startups and small businesses, the S.A.S. allows single-person incorporation with minimal requirements and an online registration process, enabling quick and low-cost market entry.
 - **Other Structures:** Depending on the nature of the business and sector-specific regulations, investors may also consider alternative structures, such as joint ventures or branch offices.

ii. Required Documentation

Upon determining the legal structure, the following documents will be needed for business registration:

- **Articles of Incorporation (Acta Constitutiva):** This document outlines the company's purpose, structure, capital contributions, and the responsibilities of its shareholders or members. It must be formalized before a Mexican notary public.
- **Proof of Identity:** All shareholders or members must present valid identification, such as passports for foreign individuals.
- **Foreign Investor Approval:** In some cases, foreign investors may require approval from the Mexican Foreign Investment Registry (Registro Nacional de Inversiones Extranjeras), particularly in sectors with ownership restrictions outlined in the Mexican Investment Law (Ley de Inversión Extranjera).
- **Additional Documentation:** This may include tax forms, bank references, and, if necessary, visa or residency permits for foreign shareholders or directors.

1. Registration with the Public Registry of Commerce

Once the necessary documents are compiled, the next step is to register the company with the Public Registry of Commerce (Registro Público de Comercio), which legally validates the company's existence. This process involves:

- Formalizing the Articles of Incorporation before a Mexican notary public.
- Filing such a formalized version with the Public Registry of Commerce (Registro Público de Comercio) in the state where the business will operate.

After registration, the company will receive a registration number, granting it the legal authority to conduct business activities.

c. Registration with the Mexican Tax Authority (SAT)

All businesses operating in Mexico must register with the Servicio de Administración Tributaria (SAT), the Mexican Tax Authority. This process includes:

Obtaining a Tax ID Number (Registro Federal de Contribuyentes or RFC), which is essential for tax reporting and compliance.

- Registering the company's legal representative and designating an authorized individual responsible for tax filings.
- Enrolling the company in the appropriate tax regime, which varies based on the nature of the business.

d. Additional Considerations for Foreign Investors

- ***Visas and Residency:*** Foreign business owners or directors may need to obtain a visa or residency permit to operate a business in Mexico. Common options include the Temporary Resident Visa (for stays longer than 180 days) or the Investor Visa (Visa de Inversionista).
- ***Foreign Investment Restrictions:*** In specific sectors such as telecommunications, energy, and certain areas of real estate, foreign investors may encounter ownership limits or be required to obtain special government approval, as outlined by the Ley de Inversión Extranjera.
- ***Compliance with Additional Regulations:*** Foreign investors must also adhere to other relevant laws and regulations, including environmental, labor, and health standards, which can impact their business operations in Mexico.
- ***Foreign Investor Approval (RFE):*** Foreign ownership in certain sectors or exceeding 49% often requires registration with the *Registro Nacional de Inversiones Extranjeras* (RNIE). This is particularly important for sensitive industries like energy and telecommunications.

III. Taxation and Banking Compliance for Foreign Investors in Mexico

a. Principal Tax Obligations

Establishing a business in Mexico requires a clear understanding of key tax obligations to ensure compliance and facilitate successful operations. The main tax responsibilities include corporate income tax, value-added tax (IVA), and payroll taxes. Businesses must charge and collect IVA on sales, while payroll taxes depend on the number of employees and relevant labor regulations, including contributions to social security and other benefits.

Registering with the Servicio de Administración Tributaria (SAT) is essential for tax compliance. All businesses, including those fully owned by foreigners, must obtain a Tax Identification Number (RFC) at the start of operations. This registration enables the SAT to monitor compliance with tax obligations.

Foreign-owned businesses also have specific reporting requirements, including adherence to transfer pricing regulations to ensure fair pricing for transactions between related entities. Additionally, businesses are required to submit annual financial reports to the SAT, outlining their financial status and confirming adherence to tax laws.

b. Relevant Banking Regulations

In addition to tax obligations, foreign investors must also navigate relevant banking regulations that impact their operations in Mexico. Key banking laws include stringent anti-money laundering (AML) requirements that require businesses to establish internal controls, conduct risk assessments, and report suspicious transactions. These regulations aim to prevent illegal activities and ensure the integrity of the financial system.

Currency exchange rules also play a significant role in banking for foreign investors. Mexico has a regulated foreign exchange market, and businesses must comply with regulations governing the purchase and sale of foreign currency. Companies need to be aware of the implications of foreign exchange fluctuations on their operations and financial reporting.

Moreover, foreign-owned entities operating in Mexico must adhere to established financial reporting standards. This includes following the Mexican Financial Reporting Standards (Normas de Información Financiera or NIF), which dictate how financial statements should be prepared and presented. Compliance with these standards is essential for transparency and credibility in financial reporting, as well as for fulfilling obligations to stakeholders and regulatory authorities.