

THE MEXICAN CORPORATION – THE VEHICLE FOR BUSINESS DEALINGS IN MEXICO

“XYZ Company, S.A. de C.V.” – What does all THAT mean?

by Linda Neil

The *Sociedad Anonima de Capital Variable*, translated literally is an anonymous society of variable capital. This is equivalent to the U.S. corporation in which there are stockholders. In Mexico it is governed by the Law of Mercantile Societies. More and more, foreigners are forming Mexican mercantile corporations which end with the initials, “S.A. de C.V.”, to do business and to achieve their financial goals in Mexico. The SadeCV is similar to the “Inc.” of the United States and Canada.

Another version of a corporate entity is the Limited Liability Company which has become more common in recent years. The Mexican counterpart is the SRLde CV, the Limited Responsibility company with variable capital.

While there are differences between the S.A. de C.V. and the S.R. L. de C.V., for our purposes here, both are included under the term “corporation” in this article.

As of December 1993, the corporation formed in Mexico is considered as “Mexican” even though all shareholders may be foreign persons.

When should a corporation be formed? It will make sense if the shareholders wish to perform services or sell goods for profit, build a hotel, or if they wish to develop a property for resale in lots or condominiums. The corporate entity permits the principals to obtain working papers and to obtain working papers for other foreigners who provide services not easily obtained in the local job market. Care must be taken, however, to set up the financial reporting system, to obtain invoices for all pre-operating expenses and to have an accountant who is knowledgeable to make the required declarations in Hacienda, México’s version of Uncle Sam or Revenue Canada.

The minimum capital investment in a Mexican corporation is \$50,000.00 Mexican pesos. Evidence of this capital contribution must be in cash or in assets which equal the total amount of the start up capital. It is important to make the declaration of all assets which are to be included from the start up of the corporation. Do not select the minimum amount just because it is the minimum. If you do it may later be difficult to establish the true amount of initial capital invested. Once the initial capital is established, additional investment may be added by making a declaration before a Notary Public, without requesting permission to do so from the government. This is the *Variable Capital* portion of the equation.

It is important to include in the corporate charter a statement of purpose (*objecto social*) that is very general. It should mention all activities that may be of interest to the shareholders; better to have an ample charter, permitting many business activities, rather than to have it limited to one activity. It is also a good idea to include export and import of all types of merchandise and technology in the charter. This makes bringing equipment and or supplies in from another country simpler.

A minimum of two shareholders is required to form a corporation. These shareholders will be required to sign the corporate charter before a Mexican Notary Public. If they come into Mexico as tourists to sign the documents they should obtain an FM-3 or

FMN document at their local Mexican Consulate prior to coming so they may perform a business activity (signing the document) in a legal manner. Once the corporation has been formed it is necessary to obtain a federal tax registration number for the corporation and the administrator or board of directors must obtain the FM-3 permit to work in the activities of the corporation.

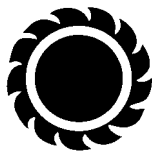
If the corporation includes or is composed of foreign stockholders it will include a clause in which the foreigners promise to be considered as Mexicans in the eyes of the law and not to invoke the aid of their government in the event of a dispute.

Administration of matters of the corporation may be either through a sole administrator (*administrador unico*) or through a board of directors. A *Comisario* must be appointed. This is the person responsible for the accounts and tax payments and should be a Mexican accountant. The comisario does not need to be a shareholder. The duties of the administrators, whether sole administrator or board of directors need to be clearly defined. Will they be able to enter into lawsuits? Obligate the corporation for loans? Hire and fire personnel?

Generally it is wise to provide a list of five names, in order of preference, for the corporation for submission for the permit for incorporation. The first name which has not been used previously by another company will be designated. Upon confirmation of the name, the corporate documents must be prepared and signed before a Notary Public within ninety days or the authorized name will become invalid and the process must be begun again. Together with the name request, permission to incorporate, where foreigners are involved, must be obtained from SECOFI, the Secretary of Industry and Commerce.

Upon completion of the corporate document, it must be recorded in the local registry of Business and Commerce, the National Foreign Investment Registry and the business enrolled in the local Chamber of Commerce or Industry Chamber. Monthly declarations must be filed with tax authorities. Additionally, the corporate accountant must file an annual statement with the National Foreign Investment Registry regarding the business activity for the previous year. If the corporation is used for property development or is not active, the Mexican accountant will probably charge about \$600. Dlls. per year to do the required filings. If the corporation is active the accounting charge may be \$300. to \$500. Dlls. per month, or more.

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The Settlement Company®:

Mexico: 01-800-627-5130

International: 1-877-214-4950 or 011-52-612-123-5056

FAX: (011-52) 612-123-5056

E-mail info@settlement-co.com,

website: <http://www.settlement-co.com>