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Mexico

CORPORATE GOVERNANCE

Contributor

Villar & Villar Abogados, S.C.



Juan José Villar Flores

Managing Partner | jjvillar@villarabogados.com.mx

Hermes Jesús de la Rosa Luna

Senior Associate | hdelarosa@villarabogados.com.mx

This country-specific Q&A provides an overview of corporate governance laws and regulations applicable in Mexico.

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MEXICO

CORPORATE GOVERNANCE



1. What are the most common types of corporate business entity and what are the main structural differences between them?

In Mexico, the most common types of corporate entities include Sociedad Anónima (SA), Sociedad de Responsabilidad Limitada (SRL), and Sociedad Anónima Promotora de Inversión (SAPI). SAPI is a relatively new form designed to encourage investment. In SAs capital stock is represented by shares, controlled by Shareholders, and is the most versatile option, while SRL's capital stock is represented by equity interest, controlled by its Partners, and has tax advantages for foreign partners in some countries. SAPIs are an evolution of SA giving it different mechanisms suitable to open it for investment while keeping control.

2. What are the current key topical legal issues, developments, trends and challenges in corporate governance in this jurisdiction?

Key issues include enhancing transparency, strengthening accountability, and aligning with international best practices. Developments involve increased focus on environmental, social, and governance (ESG) factors. Challenges include adapting to evolving global governance standards and addressing cybersecurity risks.

3. Who are the key persons involved in the management of each type of entity?

Management structures vary and can be adapted according to each company's needs; however, entities typically have (i) Shareholders' / Partners' Meetings, that are held from time to time, normally 1-3 times a year, and take the most relevant decisions and decide the overall strategy; (ii) a Sole Administrator or a Board of Directors, who follow through the Shareholders' / Partners' decisions and address other matters that may arise; and (iii) one or more attorneys-in-fact that may or

may not be executive officers, depending on the entity's size and complexity, who manage day-to-day administration. Kindly note that, unlike in other countries, appointing an officer does not grant him/her authority to represent the entity, which requires a specific power-of-attorney to be granted.

4. How are responsibility and management power divided between the entity's management and its economic owners? How are decisions or approvals of the owners made or given (e.g. at a meeting or in writing)

The Shareholders / Partners oversee strategic decisions in their meetings, while day-to-day management falls to the Sole Manager or Board of Directors and executive officers. Major decisions often require Shareholders/Partners approval, by means of a Meeting, or unanimous resolutions taken outside a meeting, which needs to be made in writing or signed by electronic means (following the entity's by-laws). Supporting instructions in written or by electronic means is suggested.

5. What are the principal sources of corporate governance requirements and practices? Are entities required to comply with a specific code of corporate governance?

Corporate governance requirements arise from both legislation, specifically the Commercial Companies Act (*Ley General de Sociedades Mercantiles*), the entity's By-Laws and voluntary adherence to corporate governance codes according to each entity's preference, although there is no legal requirement for a specific code.

6. How is the board or other governing

body constituted? Does the entity have more than one? How is responsibility for day-to-day management or oversight allocated?

The Board is constituted by Shareholder / Partner election, and its size and composition vary, as well as its election requirements, which are normally set in the entity's by-laws and shareholders' agreements, if any. Day-to-day management is delegated to executive officers, who may also be part of the Board.

7. How are the members of the board appointed and removed? What influence do the entity's owners have over this?

Shareholders/Partners appoint directors, through voting at Meetings or Resolutions. Removal mechanisms are usually outlined in the entity's by-laws, however in practice is managed by their substitution by appointing new Board members by a Meeting or Resolution. Shareholders / Partners have complete influence over appointments and dismissals through their voting power.

8. Who typically serves on the board? Are there requirements that govern board composition or impose qualifications for board members regarding independence, diversity, tenure or succession?

Boards ideally consist of a mix of executive and independent Directors. Although there are very few legal requirements for their appointment (being unable to perform commercial activities), there is a growing trend towards diversity and independence, to promote broader ideas to be considered while taking decisions.

9. What is the role of the board with respect to setting and changing strategy?

The Board is responsible for setting and overseeing the implementation of the entity's strategy. Changes in strategy typically involve extensive Board discussions and may require Shareholder / Partner approval for significant shifts.

10. How are members of the board compensated? Is their remuneration regulated in any way?

Board compensation is determined by Shareholders /

Partners. Here is no regulation regarding their compensation; however, transparency in disclosing executive compensation, promoting fairness and alignment with company performance is recommended.

11. Do members of the board owe any fiduciary or special duties and, if so, to whom? What are the potential consequences of breaching any such duties?

Directors owe fiduciary duties to the entity, including the duty of confidentiality, care, loyalty, and good faith, other duties can be included in the by-laws. Breaching these duties may lead to legal action, fines, or removal from the Board. Also, Directors may have personal liabilities for illegal activities.

12. Are indemnities and/or insurance permitted to cover board members' potential personal liability? If permitted, are such protections typical or rare?

Indemnities and insurance can be used to mitigate personal liability for directors. These protections are typically used in large companies only, especially those that use them abroad.

13. How (and by whom) are board members typically overseen and evaluated?

Boards can be evaluated through self-assessments, external reviews, or a combination of them. Shareholders / Partners, through voting and feedback mechanisms, play a key role in oversight, ensuring accountability.

14. Is the board required to engage actively with the entity's economic owners? If so, how does it do this and report on its actions?

Engaging with economic owners is essential. Boards often communicate through shareholder meetings, quarterly and annual reports and, increasingly, through digital channels. Enhanced disclosure and dialogue are encouraged.

15. Are dual-class and multi-class capital

structures permitted? If so, how common are they?

Dual-class and multi-class structures are permitted but relatively uncommon in Mexico. Companies considering such structures must consider tailor-made internal regulations and controls for transparency purposes.

16. What financial and non-financial information must an entity disclose to the public? How does it do this?

Publicly traded entities must disclose financial statements and significant changes such as mergers or spin-offs. This is typically done through regulatory filings, annual reports, and press releases.

17. Can an entity's economic owners propose matters for a vote or call a special meeting? If so, what is the procedure?

Shareholders / Partners can propose matters for a vote, and some entities allow them to call special meetings. Procedures are outlined in the entities' bylaws, usually requiring a certain percentage of ownership to initiate such actions. The procedure may greatly vary from one entity to another.

18. What rights do investors have to take enforcement action against an entity and/or the members of its board?

Investors may file lawsuits for breaches of fiduciary duty or other legal violations, entities' by-laws include both the cases in which these actions can be enforced, as well as the procedure to be followed.

19. Is shareholder activism common? If so, what are the recent trends? How can shareholders exert influence on a corporate entity's management?

Shareholder activism is gaining traction, focusing on ESG issues and corporate governance reforms. Shareholders exert influence through voting and direct engagement with management.

20. Are shareholder meetings required to be held annually, or at any other specified

time? What information needs to be presented at a shareholder meeting?

Annual Shareholders' / Partners' Meetings are mandatory, usually during the first 4 months of each year. The information needs to be sent or be made available to attendants at least 15 days before the meeting and includes reports by the board and by the statutory auditor (if any).

21. Are there any organisations that provide voting recommendations, or otherwise advise or influence investors on whether and how to vote (whether generally in the market or with respect to a particular entity)?

Proxy advisory firms are seldomly used, and mostly accessible to large investors, providing voting recommendations based on corporate governance principles.

22. What role do other stakeholders, including debt-holders, employees and other workers, suppliers, customers, regulators, the government and communities typically play in the corporate governance of a corporate entity?

Corporate governance decisions are mostly limited to Shareholders / Partners and Directors, other stakeholders may influence them or may be heard, but are unable to take decisions.

23. How are the interests of non-shareholder stakeholders factored into the decisions of the governing body of a corporate entity?

Stakeholder interests are considered in decision-making, with some companies appointing stakeholder representatives or creating committees to ensure diverse perspectives are taken into account.

24. What consideration is typically given to ESG issues by corporate entities? What are the key legal obligations with respect to ESG matters?

ESG considerations are increasingly prioritized. While there are no specific legal obligations, companies often

adopt voluntary ESG standards, and regulatory bodies encourage disclosure and responsible business practices, with a special emphasis in Environmental matters.

25. What stewardship, disclosure and other responsibilities do investors have with regard to the corporate governance of an entity in which they are invested or their level of investment or interest in the entity?

Although there is no legal obligation or standard in this regard, investors are expected to exercise stewardship

by actively participating in corporate governance, including voting on key matters and engaging with boards on ESG and governance issues.

26. What are the current perspectives in this jurisdiction regarding short-term investment objectives in contrast with the promotion of sustainable longer-term value creation?

There is a growing emphasis on sustainable long-term value creation. Investors and companies increasingly recognize the importance of balancing short-term objectives with environmental and social considerations for sustainable growth.

Contributors

Juan José Villar Flores
Managing Partner

jjvillar@villarabogados.com.mx



Hermes Jesús de la Rosa Luna
Senior Associate

hdelarosa@villarabogados.com.mx

