Chambers AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

Corporate Governance 2025

Definitive global law guides offering comparative analysis from top-ranked lawyers

Mexico: Law and Practice

Allan Kaye Trueba, Mariana Santillán Trejo and Rebeca Sanchez
Aziz & Kaye Abogados, S.C.

MEXICO

Law and Practice

Contributed by:
Allan Kaye Trueba, Mariana Santillán Trejo and Rebeca Sanchez
Aziz & Kaye Abogados, S.C.

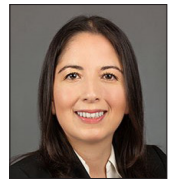
Contents

Aziz & Kaye Abogados, S.C. is headquartered in Mexico City. The firm serves as a strategic ally and gateway for doing business in Mexico. Its mission is to provide bespoke legal advice, delivering value to companies seeking top-tier professionals with strong legal expertise and a business-oriented approach to decision-making. Specialising in corporate, transactional, financial, and antitrust law, Aziz & Kaye navigates the complex legal and commercial landscapes of its clients. With two partners, one of counsel and six associates, the corporate team draws on over three decades of experience, offering expert advice on M&A, joint ventures, due diligence, corporate governance, foreign investment, and global relocation (nearshoring). Its corporate clients operate across a range of industries including real estate, banking, entertainment, healthcare, advertising, transportation, and telecommunications, with a client base that includes publicly listed companies in both Mexico and the US.

Authors

Allan Kaye Trueba is a founding partner of Aziz & Kaye Business Law. His practice focuses mainly on M&A, corporate law, finance law, corporate governance, attracting foreign investment, minority rights, and shareholder disputes. In addition to his legal practice, he is a founding partner and promoter of a venture capital fund. He graduated from the Instituto Tecnologico Autonomo de México (ITAM). He completed postgraduate studies in The Hague, the Netherlands and ITAM. Additionally, he is a professor in a postgraduate programme at ITAM, and has lectured at Universidad Panamericana and Universidad Iberoamericana.

Mariana Santillán Trejo is a senior associate at Aziz & Kaye Business Law, with 17 years' experience. Her practice focuses on M&A, corporate and real estate law, shareholder disputes and foreign investments. She completed her studies at Instituto Tecnologico de Monterrey, and earned a degree in International Negotiation at the École Superieure de Commerce in Rouen, France.



Rebeca Sanchez is of counsel at Aziz & Kaye Business Law and is licensed to practice law in Mexico and California. Her work focuses on M&A, corporate law and privacy. She has represented clients in domestic and cross-border transactions. Rebeca holds a law degree from the Instituto Tecnologico Autonomo de Mexico (ITAM) and completed a an LLM in Financial Law at Goethe Universität in Frankfurt. She serves as President of the Board of Directors for the ITAM Alumni Association in the San Francisco Bay Area and is a member of the San Francisco La Raza Lawyers Association.

Aziz & Kaye Abogados, S.C.

Edificio Reforma Plus,
Paseo de la Reforma #2620
Suite 304,
Col. Lomas Altas,
Alcaldía Miguel Hidalgo,
C.P. 11950, Mexico City
Mexico

Tel: +52 555 985 6605
Email: contacto@azizkaye.com
Web: www.azizkaye.com/english/index.html

1. Introductory

1.1 Forms of Corporate/Business Organisations

The main business organisations in Mexico are governed by the General Law of Business Companies (*Ley General de Sociedades Mercantiles*) and are as follows:

- limited liability companies (*sociedad de responsabilidad limitada*);
- corporations (*sociedad anónima*);
- general partnerships (*sociedad en nombre colectivo*);
- limited partnerships (*sociedad en comandita simple*);
- limited joint-stock partnerships (*sociedad en comandita por acciones*);
- cooperative companies (*sociedad cooperativa*); and
- simplified corporations (*sociedad por acciones simplificada*).

Any of these may be incorporated or converted into a variable capital company, in which case the company must add the words *"of variable capital stock"* (*"de capital variable"*) to its corporate name. Variable capital companies are typically preferred as there are fewer formalities involved in adjusting the variable portion of their capital stock.

Limited liability companies and corporations are the most common form of business organisations for conducting business in Mexico.

Limited Liability Companies

Two or more partners can set up a limited liability company, but the number of partners must not exceed 50. The partners in a limited liability company are liable only to the extent of their equity contribution. Any person who is not a partner but allows the use of their name in the name of the company is liable for the company's transactions up to an amount equal to the largest equity contribution in the company.

Equity interests are not represented by stock certificates, nor are they freely transferable. The admission of new partners and any assignment or transfer of equity interests must be approved by the partners representing at least the majority of the capital stock, unless the company's by-laws provide for a higher proportion. In general,

such consent is not required when an equity interest is transferred by inheritance.

The partners have a right of first refusal if any other partner transfers equity shares. Should several partners intend to exercise this right, it will be exercised in proportion to their contributions.

Limited liability companies are required to keep a Special Partners Book that details the name, address, contributions, and taxpayer registry number of each partner and any transfer of their equity interests. Transfers are only effective upon registry in this book, and a notice of the registry will be published on an electronic platform operated by the Ministry of the Economy.

In practice, limited liability companies may also keep a Book of Minutes of Partners' Meetings, a Book of Variations to Capital Stock, and a Book of the Board of Managers' Meetings.

Given that a limited liability company may qualify as a pass-through entity for US tax purposes, US companies frequently use this type of company as a subsidiary in Mexico.

Corporations

Corporations are regulated by the General Law of Business Companies. However, they may adopt the form of a promotion investment corporation (*sociedad anónima promotora de inversión*, or SAPI), which is also regulated by the Securities Market Law (*Ley del Mercado de Valores*).

Companies with shares that are publicly traded are incorporated as corporations. These may either be a stock corporation (*sociedad anónima bursátil* or SAB) or a stock promotion investment corporation (*sociedad anónima promotora de inversión bursátil*, or SAPIB). See **1.3 Corporate Governance Requirements for Companies With Publicly Traded Shares** for more information. However, under the recently created framework for simplified issuers, entities seeking to issue equity securities through this simplified mechanism must be a SAPIB. See **2.1 Hot Topics in Corporate Governance** for more information.

Corporations are formed by two or more shareholders whose liability is limited to the payment of their shares. Such shares are represented by certificates that are freely transferable unless otherwise provided for in the company's by-laws or a shareholders' agreement.

Corporations are required to keep a Book of Minutes of Shareholders' Meetings, a Book of Variations to Capital Stock, and a Share Registry Book. The Share Registry Book must contain, among other items, the name, address, nationality, and taxpayer registry number of the shareholders, details on the shares held by each shareholder, and the contribution payments and transfers made.

Transfers of shares are effective upon the endorsement of the share certificate to the acquirer and the registry of the transfer in the Share Registry Book. A notice of such registry shall be published on an electronic platform operated by the Ministry of the Economy.

In practice, some corporations governed by a board of directors choose to maintain a corporate book documenting the meetings of this governing body.

According to the General Law of Business Companies, the shareholders of corporations have certain minority rights, such as the following.

- When the board of directors or the surveillance body is comprised of three or more members, shareholders may appoint a member of the board or a statutory auditor, as applicable, if they hold 25% or more of the capital stock.
- Shareholders holding at least 33% of the capital stock may call a shareholders' meeting.
- Shareholders that own 25% or more of the capital stock may: (i) exercise a liability action against directors; (ii) delay the voting on an issue; and (iii) judicially oppose a resolution adopted by the general shareholders' meeting.

Promotion Investment Corporations

Promotion investment corporations (SAPI) are companies regulated by the Securities Market Law and the General Law of Business Companies. The SAPI was created to promote capital risk investments by providing more flexibility to agree on several issues that were considered relevant for investors and granting minority rights with a lower participation percentage.

As stated, a SAPI is a variation on a regular corporation. Several amendments to the regulation of corporations have reduced the number of differences between both types of entities.

However, there are still some relevant distinctions between them, as follows:

- SAPIs are allowed to acquire their shares; corporations are not allowed to carry out such acquisitions, except in the case of judicial adjudication for the payment of the company's debts; and
- SAPIs are managed by a board of directors; corporations may be managed by a board of directors or a sole manager.

Shareholders in a SAPI may:

appoint a member of the board of directors or statutory auditors for each 10% of the voting shares held individually or in aggregate, even if voting rights are limited or restricted;

- if they hold at least 10% of the capital stock of the company, call a general shareholders' meeting;
- if they hold 15% or more of the shares with voting rights (even if limited or restricted) or without voting rights, exercise a liability action against the directors;
- if they hold 10% or more of the capital stock of the company, delay voting on a specific issue; and
- if they hold 20% or more of the capital stock of the company, judicially oppose a resolution adopted by the general shareholders' meeting.

Shareholders in corporations cannot be excluded from profit sharing. SAPI may issue shares with special rights regarding profit sharing and other economic rights that expand or limit the shareholders' rights over profits.

1.2 Sources of Corporate Governance Requirements

Corporate governance requirements are outlined mainly in the General Law of Business Companies and, for the SAPI, SAB and SAPIB, in the Securities Market Law. The laws apply at federal level and to all companies in Mexico, irrespective of the state of incorporation of the company.

Corporate governance requirements are also outlined in the companies' corresponding by-laws and, when applicable, in shareholder agreements.

For entities whose operations are subject to governmental approval, certain corporate governance requirements may be prescribed by the relevant regulatory framework.

For example, multiple-purpose financial companies (*sociedades financieras de objeto múltiple*, or SOFOMs), besides complying with the General Law of Business Companies (and the Securities Market Law if the SOFOM is also a SAPI), must comply with the requirements of corporate name and corporate purpose set forth in the General Act on Credit Organisations and Related Activities (*Ley General de Organizaciones y Actividades Auxiliares del Crédito*).

Certain corporate requirements may also be found in tax legislation. For example, the Federal Fiscal Code (*Código Fiscal de la Federación*) states that the shareholders' taxpayer registry number must be annotated in the Special Partners or Share Registry Books, as applicable. Furthermore, companies are also obliged to file a notice before the tax authorities on any change of partners or shareholders.

1.3 Corporate Governance Requirements for Companies With Publicly Traded Shares

Companies with shares that are publicly traded must comply with the corporate governance provisions of their by-laws, the Securities Market Law and, in the absence of a specific rule, the provisions of the General Law of Business Companies.

As discussed in **1.1 Forms of Corporate/Business Organisations**, there are two types of companies whose shares can be publicly traded, the SAB and the SAPIB.

The shareholders of SABs are entitled to minority rights, including the following.

- For each 10% of the capital stock granting them the right to vote, even if on a limited or restricted basis, they may: (i) appoint one member of the board of directors; (ii) request a general shareholders' meeting; and (iii) request a delay (once and only for three days) on the voting of any matter on which they consider they have not received adequate information.
- When holding 20% or more of the capital stock with the right to vote (even if their vote is restricted or limited), they may judicially oppose the resolutions of the general shareholders' meetings to the extent they have the right to vote over such resolutions.

In addition, the shareholders are permitted to:

- exercise a liability action against the management of the company when holding 5% of the capital stock represented by shares granting voting rights, limited voting rights, or no voting rights; and
- access information regarding the agenda of any general shareholders' meeting at least 15 days in advance of the day of the meeting.

Management of SABs is entrusted to the board of directors and a chief executive officer (director general). The board of directors may consist of up to 21 members and at least 25% of them must be independent members. See **4.5 Rules/Requirements Concerning Independence of Directors** for more information on independence criteria.

For each proprietary director, an alternate director may be appointed. It is important to note that

alternate directors for independent directors must also meet the independence criteria.

The board of directors of an SAB is supported by the Corporate Practices Committee and the Audit Committee. These must each have three or more members, who must be independent. In SABs controlled by a person or group of people with 50% or more of the capital stock, the Corporate Practices Committee may comprise at least a majority of independent members that will be disclosed to the public.

SABs have no statutory auditor. Monitoring of the company's activities is entrusted to the board of directors, through its Corporate Practices and Audit Committees, and to the external auditor.

2. Corporate Governance Context

2.1 Hot Topics in Corporate Governance

The most recent significant amendment to the General Law of Business Companies was made in October 2023 to incorporate provisions permitting remote meetings of shareholders, partners, directors, or managers. To take advantage of this change, amendments to the by-laws are necessary to expressly allow remote meetings.

In December 2023, amendments to the Securities Market Law were introduced to increase the number of companies with publicly traded shares. These changes allow SABs to issue shares with varying rights and restrictions. This flexibility enables founders or owners of companies to maintain control of the company by offering shares with limited corporate rights when opting to list and offer shares to the public.

Building on these amendments to the Securities Market Law, the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) issued the General Provisions applicable to Simplified Issuers (*Disposiciones de Carácter General Aplicables a las Emisoras Simplificadas y los Valores Objeto de Inscripción Simplificada*), which came into effect on 22 January 2025. These provisions establish a tiered framework categorising simplified issuers into: Simplified Equity Issuers (for stocks), Level I Simplified Issuers (for debt instruments with lower thresholds), and Level II Simplified Issuers (for debt instruments and asset-backed securities). The framework also contemplates Structured Securities, though their specific requirements are still not defined. Simplified securities can only be offered to institutional and qualified investors. Simplified disclosure requirements and streamlined registration processes are applicable to simplified issuers compared to traditional ones.

Likewise, and in contrast to private corporations, where authority rests solely with the general shareholders' meeting, SABs and SAPIBs now have the option to delegate authority to their board of directors to increase the capital stock and also determine the terms of the subscription of the shares.

On 30 April 2025, the Mexican Supreme Court's First Chamber issued a ruling (*Amparo directo en revisión* 767/2023) that materially impacts the civil liability framework for directors of Mexican companies.

The ruling confirms that directors can face individual liability in non-contractual matters when shareholders or partners suffer direct personal harm, such as unjustified refusal to register them in the corresponding corporate book or failure to pay dividends to specific shareholders or partners. The Court distinguished this individual action, based on article 1910 of the Federal Civil

Code, from the traditional social action that aims at protecting the company's assets pursuant to Articles 161 and 163 of the General Law of Business Companies.

While this decision significantly strengthens shareholder or partner protection and access to justice, it simultaneously creates new liability risks for individuals serving as directors or board members of Mexican companies.

2.2 ESG Considerations

Mexico has recently strengthened its ESG framework. Following the December 2023 amendment to the Securities Market Law that authorised the Ministry of Finance and Public Credit to issue provisions on sustainable development, the Mexican Council for Financial Information and Sustainability Standards (CINIF) published the Sustainability Information Standards (NIS A-1 and NIS B-1) in 2024. Subsequently, on 28 January 2025, amendments to the General Provisions for Securities Issuers (*Disposiciones de Carácter General Aplicables a las Emisoras de Valores y a otros Participantes del Mercado de Valores*) were published, requiring issuers to prepare and disclose sustainability information following the IFRS Sustainability Disclosure Standards (IFRS S1 and IFRS S2) issued by the International Sustainability Standards Board (ISSB).

The January 2025 amendments require issuers to submit a Sustainability Report that discloses information about sustainability-related risks and opportunities that could reasonably be expected to affect their cash flows, access to financing, or cost of capital in the short, medium, or long term. The report must include information on governance, strategy, risk management, and related metrics and objectives. The obligation to submit these reports begins in 2026 (with regards to the annual information corresponding to 2025).

Furthermore, on 1 January 2025, an amendment to the General Provisions on Insurance and Bonds (*Circular Modificatoria 2/24 de la Única de Seguros y Fianzas*) came into effect, which requires insurance and bonding institutions in Mexico to incorporate ESG criteria in their investment decisions and asset-management practices. These entities must now include such criteria in their investment policies.

3. Management of the Company

3.1 Bodies or Functions Involved in Governance and Management

The main bodies involved in the governance and management of a corporation are the shareholders' meeting and the board of directors.

Certain companies may also have committees that aid the company's managing body (eg, Auditing and Corporate Practices Committees). Such committees are mandatory for publicly listed companies, as discussed in **1.3 Corporate Governance Requirements for Companies With Publicly Traded Shares**.

For private companies, statutory auditors also play an important role in monitoring the activities of the company's management body.

3.2 Decisions Made by Particular Bodies

The general shareholders' meeting is the most important corporate body within a corporation. It may approve and ratify all acts and operations of the company, and its resolutions are carried out by the person specifically appointed for this purpose or, in the absence of such an appointee, by the sole manager or by the board of direc-

tors. See **5.3 Shareholder Meetings** for further information.

The board of directors in a private company usually resolves on the granting of powers of attorney, the approval of the annual report that will be presented to the shareholders' meeting, approval of transactions, and appointment of the company's high-ranking officers.

The board of directors in publicly listed companies must approve, among other matters (and with the prior approval of the appropriate committee) the policies and guidelines for the use of the company's (and its subsidiaries') assets by related parties, transactions with related parties, unusual transactions or transactions exceeding certain thresholds, policies for the granting of any loan, financing or guarantee, accounting policies, engagement of external auditors, and guidelines for internal control and internal audit.

The board of directors does not have the authority to approve any matter that the law reserves for the approval of the shareholders' meeting, such as those reserved for extraordinary meetings that are detailed in **5.3 Shareholder Meetings**.

However, there may be exceptions for publicly listed companies, such as the authority that may be delegated to the board of directors to increase and reduce the SAB's or SAPIB's capital stock.

3.3 Decision-Making Processes

These bodies generally make their decisions at meetings, subject to specific rules.

See **5.3 Shareholder Meetings** for details on the rules applicable to the shareholders' meetings.

Unless a higher percentage is set in the company's by-laws, meetings of boards of directors' are considered legitimate when at least 50% of the board members are present, and resolutions are considered legitimate when approved by majority vote. Unless the by-laws state otherwise, the president of the board has a casting vote in the event of a tie. If allowed by the company's by-laws, the members of the board of directors may approve decisions outside of a meeting, if their resolutions are unanimous and confirmed in writing.

4. Directors and Officers

4.1 Board Structure

The board of directors is comprised of two or more members appointed by the shareholders' meeting, and will include at least a chair from this managing body.

The General Law of Business Companies does not set forth a maximum number of members for the board of directors, or any independence requirements. The number of members of the board of directors must be stated in the company's by-laws.

See **1.3 Corporate Governance Requirements for Companies With Publicly Traded Shares** for details on the board structure of publicly listed companies.

4.2 Roles of Board Members

The board of directors has a chairperson and, in certain cases, a secretary.

Besides having a casting vote, the chair is authorised to represent the board in the execution of acts (if no delegate has been appointed with this purpose).

In publicly listed companies, the chair of the board may suggest the members to be appointed as members of the company's committees, on the understanding that the chair of the board of directors cannot be chairperson of any of the committees.

Private companies are not required to have a board secretary. However, a secretary (who may or may not be a member of the board) is usually appointed, and is in charge of keeping corporate records and issuing certificates on shareholding structure or other corporate information.

In an SAPIB, the secretary of the board of directors must certify the company's shareholding structure if the company would like its shares registered on the stock exchange.

In an SAB, the board of directors must appoint a secretary who is not a member of the board of directors but who must comply with most of the obligations and duties applicable to the members of the board. The secretary must review and confirm that the shareholders are duly represented at shareholders' meetings, and must certify the authenticity or truthfulness of certain corporate documents that must be filed before the securities authorities.

4.3 Board Composition Requirements/ Recommendations

Even when there are no specific requirements for the composition of a private company's board of directors, the Code for Best Corporate Governance Practices issued by the Mexican Business Council (*Consejo Coordinador Empresarial*) updated as of February 2025, recommends appointing no less than three and no more than fifteen members.

In addition, for private companies, the Code suggests that:

- the board includes committees that aid the board in making decisions on auditing; evaluation and compensation; finance and planning; and risk and compliance;
- an uneven number of board members be maintained;
- no alternate members be appointed but, if necessary, the principal member should participate in the selection process of its corresponding alternate;
- at least 25% of the members of the board be independent;
- for the roles of general director and president of the board of directors different individuals be appointed;
- the independent member(s) provide a statement regarding their compliance with independency requirements and reveal potential conflicts of interests;
- at least every four years, an independent consultant prepares a performance assessment of the board and of each board member individually;
- the company sets forth guidelines for the retention and succession of board members, with special focus on independents; and
- women be included.

4.4 Appointment and Removal of Directors/Officers

Those who are legally disqualified from engaging in commercial activities may not serve as members of the board. Additionally, for publicly listed companies, no person who has held the position of external auditor of the company (or any of the entities of its corporate group) during the 12 months immediately preceding the date of appointment can be appointed as a member of the board of directors.

Members of the board of directors are appointed and removed by the general shareholders' meeting. In publicly listed companies, the board of directors must approve the election, appointment, and removal of the chief executive officer and their compensation. Approval by the board is also required for the guidelines for appointing and compensating other high-ranking officers.

4.5 Rules/Requirements Concerning Independence of Directors

Independence

There is no mandatory independence requirement for the members of the board of private companies. In publicly listed companies, at least 25% of the members of the board must be independent.

The independent directors and, if applicable, their respective alternates, should be chosen based on their experience, capacity, and professional reputation. They must fulfil their duties without conflicts of interest and without being influenced by personal, financial, or economic factors. The independence of directors will be evaluated by the general shareholders' meeting during their appointment or ratification.

The following individuals do not qualify as independent.

- High-ranking officers or employees of the company (or any entity of the company's corporate group), as well as their statutory auditors, who have held these positions within the past 12 months.
- Individuals with significant influence or control over the company (or any entity within the company's corporate group).
- Shareholders who are part of the controlling group of the company.
- Customers, service providers, suppliers, debtors, creditors, partners, directors, or employees of entities that have significant business relationships with the company. A business relationship is considered significant if the company's sales to or purchases from the entity account for more than 10% of the entity's total sales or purchases during the prior 12 months or if a loan amount is greater than 15% of the assets of the company or its counter-party.
- Individuals related by blood, marriage, or civil union up to the fourth degree, as well as spouses or partners of the individuals referred to in the preceding paragraphs.

Conflicts of Interest

If a member of the board of directors has a conflict of interest with respect to a particular transaction, they are required to disclose this to the other directors and abstain from voting on the matter. Any director found to violate this provision will be held liable for any damage or losses incurred by the company.

The Code suggests that, upon acceptance of the appointment as board member, each individual submits a statement to the Company disclosing potential conflicts of interest. Additionally, it is suggested that the board member with the conflict of interest be excused from board meetings while the matters in question are discussed.

The same principle applies for publicly listed companies. According to the Securities Market Law, board members (and the secretary) are prohibited from participating in the discussion of such matters, and their absence shall not affect the required quorum for the board to be considered legally convened. Breaching this rule and failure to disclose the conflict of interest is

considered a violation of the director's duty of loyalty.

Internal control and/or auditing committees are typically in charge of overseeing matters related to conflicts of interest, paying special attention to transactions with related parties.

As a good practice, the Code recommends that companies have structures in place to provide anonymous tips regarding conflicts of interests.

4.6 Legal Duties of Directors/Officers

Directors and officers are required to act according to the company's by-laws and all relevant laws and regulations. The duties of officers may also be outlined in an agreement.

Directors are obliged to maintain confidentiality regarding any matters or information to which they gain access in the course of their duties. However, exceptions to this rule exist when such information is requested by judicial or administrative authorities. This confidentiality obligation is valid throughout their tenure and for one year afterwards.

Furthermore, members of the board of directors are jointly liable for the following:

- shareholders' contributions;
- adhering to all requirements for the distribution of dividends;
- establishing and maintaining accounting, control, recording, filing, and information systems, as mandated by law; and
- faithfully executing the resolutions adopted by the shareholders' meeting.

Additionally, directors are jointly and severally liable with their predecessors for any known misconduct that they do not report in writing to the statutory auditor.

In publicly listed companies, the members of the board of directors are also expressly bound by the duty of care and the duty of loyalty.

Under the duty of care, the members of the board of directors are required to perform their duties diligently, in good faith, and in the best interests of the company. Members of the board of directors are considered to have breached their duty of care when they:

- refrain from attending meetings of the board of directors, and any committees to which they belong, and their absence prevents the body from legally convening, unless by justified cause as determined by the shareholders' meeting;
- withhold relevant information necessary for proper decision-making by the board or committees, unless legally or contractually obligated to maintain confidentiality; or
- fail to fulfil their obligations set forth in the company's by-laws or the applicable law.

Members of the board of directors breach their duty of loyalty when, among other examples, they:

- obtain financial gains for themselves or facilitate them for third parties, including specific shareholders or shareholder groups without legitimate cause and due to their position;
- vote in the board of directors' meetings with a conflict of interest;
- do not disclose conflicts of interest;
- intentionally favour a specific shareholder or group of shareholders within the company to the detriment or prejudice of the other shareholders;

- misuse relevant information that is not public knowledge; and
- take advantage of or exploit, for their own benefit or in favour of third parties, without the corresponding waiver of the board of directors, business opportunities that relate to the company or legal entities that are controlled by the company, or in which the company has significant influence.

4.7 Responsibility/Accountability of Directors

Directors owe their duties to the company, and, in the case of publicly listed companies, the legal entity controlled by the company or in which the company has significant influence. That is why any liability action, under the General Law of Business Companies or the Securities Market Law, is considered to be exclusively in favour of such entities, regardless of the person or group that initiates it.

In publicly listed companies, members of the board of directors are not individually or jointly liable for damages or losses incurred by the corporation (or entities controlled by the company, or in which the company has significant influence), provided they act in good faith and meet various conditions, which include the following:

- they comply with the requirements established by law or the company's by-laws;
- they base their decisions or votes on information provided by high-ranking officers, the external auditor, or independent experts, whose capacity and credibility do not raise any reasonable doubt;
- they base their decisions on the most appropriate alternatives available at the time, to the best of their knowledge and belief, or where adverse consequences could not be foreseen considering the information available; and
- they adhere to the resolutions of the shareholders' meeting, provided such resolutions do not violate the law.

4.8 Consequences and Enforcement of Breach of Directors' Duties

Under the General Law of Business Companies or the Securities Market Law, as applicable, the liability of directors may only be demanded by a resolution of the general shareholders' meeting. Directors who have been removed due to alleged liability can only be reinstated if the judicial authority deems the action against them to be unfounded. Upon the resolution by the general shareholders' meeting demanding their liability, directors will cease to perform their duties.

See **5.4 Shareholder Claims** for information on requirements to initiate a liability action for private and publicly listed companies.

4.9 Other Bases for Claims/Enforcement Against Directors/Officers

The liability of board members of publicly traded companies for damages caused due to their lack of diligence shall be joint and several among those responsible for the decision or for preventing the board from legally convening.

This liability may be limited, as specified in the by-laws or by resolution of the general shareholders' meeting, provided the actions in question are not fraudulent, in bad faith, or unlawful. Stock corporations may provide indemnifications and insurance coverage for board members, except in cases of fraudulent, bad faith, or unlawful acts.

Corporations and SAPIs are also permitted to expressly set forth in their by-laws limitations to the liability of the members of the board of directors or other high-ranking officers, provided

that such acts are not fraudulent, in bad faith, or unlawful.

A recent ruling by the Mexican Supreme Court has changed the framework concerning directors' civil liability in Mexico and confirmed that there is a pathway for individual actions, under civil law. See **2.1 Hot Topics in Corporate Governance** for more information.

4.10 Approvals and Restrictions Concerning Payments to Directors/Officers

Remuneration of the members of the board of directors may be determined in the company's by-laws. In their absence, the ordinary shareholders' meeting shall determine such remuneration.

In publicly listed companies, the board of directors must approve the remuneration for the chief executive officer and the guidelines for appointing and compensating other high-ranking officers.

Members of the board of directors shall receive no payment that may be considered to breach their duty of loyalty or any other of their duties.

4.11 Disclosure of Payments to Directors/Officers

Private companies are not required to disclose the compensation or any other amount paid to their directors or officers.

For public disclosure, publicly listed companies shall deliver to the National Banking and Securities Commission and the corresponding stock exchange, periodic reports, including information concerning the chief executive officer's compensation and guidelines for appointing and compensating high-ranking officials.

Public listed companies' annual reports that are disclosed to the public provide information on the aggregate compensation paid to the board of directors and other high-ranking officers of the company.

5. Shareholders

5.1 Relationship Between Companies and Shareholders

The shareholders are the owners of the company. The relationship between the shareholders and the company is governed by law, the provisions of the company's by-laws, and, if applicable, by any shareholders' agreement.

While transparency requirements related to shareholding structure have increased in recent years, there is no fully public, universally accessible registry of all company shareholders. Certain information about shareholders of publicly listed companies is more accessible due to disclosure requirements under securities regulations. See **5.5 Disclosure by Shareholders in Publicly Traded Companies** for more information.

5.2 Role of Shareholders in Company Management

Shareholders are not required to participate in the company's management. Directors may or may not be shareholders. If the shareholders are not members of the board of directors, they may not be able to direct the management of the company unless they have the right to appoint a member of such a body.

Besides appointing a member of the managing body, shareholders may have an impact or influence on the actions of the business by exercising the corporate rights that they are entitled to depending on the percentage of shares

held, such as calling meetings, delaying votes, or exercising a liability action against the company's management.

5.3 Shareholder Meetings

The general shareholders' meeting is the most important corporate body of a corporation. It may approve and ratify all acts and operations of the company, and its resolutions are carried out by the person specifically appointed for such purposes or, where there is no designation, by the sole manager or the board of directors.

Meetings must be held in the company's corporate domicile, which is a territory (usually a city) indicated in the by-laws. They can take place remotely if the by-laws allow.

The by-laws may also allow the adoption of resolutions outside a meeting if approved by a unanimous vote of the shareholders representing all the voting shares, provided that they are confirmed in writing.

Shareholders' meetings of corporations are divided into ordinary and extraordinary meetings. Ordinary meetings solve any matter not reserved for an extraordinary meeting. While an ordinary meeting can be convened at any time, the law mandates that such a meeting must be held at least once a year, within the first four months of each calendar year, to address any matter of the agenda in addition to: (i) approving the annual report of the managing body; (ii) appointing or ratifying the appointment of the members of the managing and surveillance bodies; (iii) if applicable, approving the compensation of directors and statutory auditors.

Extraordinary meetings are held whenever required to resolve any of the following matters of the corporation:

- extension of duration;
- early dissolution;
- increase or reduction of capital stock (changes to the variable portion of the capital are usually approved in an ordinary meeting);
- change of corporate purpose;
- change of nationality;
- transformation;
- mergers;
- issuance of preferred shares;
- redemption by the corporation of its shares and issuance of beneficial shares (*acciones de goce*);
- issuance of bonds;
- any other amendment to the by-laws; and
- any other matters for which the law or the by-laws require a special quorum.

A corporation's ordinary meeting is deemed to be legally convened when at least half of the capital stock is represented in the meeting, and its resolutions are deemed valid when adopted by the majority of the votes present. In contrast, an extraordinary meeting is legally convened when at least 75% of the capital stock is represented, and its resolutions are valid when approved by shareholders at the meeting representing at least half of the capital stock.

If it is not possible to convene the meeting on the date it was called (usually for lack of quorum), a second meeting will be called and the items on the agenda resolved irrespective of the number of shares represented on the understanding that extraordinary meetings always need to be approved by shareholders at the meeting representing at least half of the capital stock to approve an item.

Companies' by-laws may set higher percentages for either type of meeting to be deemed legally convened and to adopt resolutions.

Shareholders may be represented in the general shareholders' meetings by attorneys-in-fact. Such representation shall be conferred upon on the terms outlined in the by-laws or, where there is no provision, in writing. This special power of attorney is usually granted through a proxy letter (*carta poder*). Directors and statutory auditors are not permitted to represent shareholders in a shareholders' meeting.

If a corporation has multiple categories of shareholders, any proposal potentially affecting the rights of a specific category must first be approved by that affected category convened in a special meeting. Resolution by the special meeting requires the same majority that is required for the amendments of the by-laws of the corresponding company, and must consider the total number of shares within the affected category.

Special meetings must adhere to most of the rules applicable to general meetings, such as the meeting being held at the corporate domicile (or remote attendance if allowed by the by-laws), procedures for calling the meeting, and representation of shareholders, among other requirements.

5.4 Shareholder Claims

Under the General Law of Business Companies, shareholders representing at least 25% of the capital stock are entitled to bring a liability action against board members, provided certain requirements are met. Firstly, the claim must encompass the total amount of liabilities in favour of the corporation, rather than solely representing the personal interests of the plaintiffs. Additionally, if applicable, the plaintiffs must not have voted in favour of the resolution adopted by the general shareholders' meeting that bars them from proceeding against the defendant directors. Any assets obtained because of these actions will be received by the corporation.

Under the Securities Market Law, liability actions in a publicly listed company may be initiated by the SAB or by the SAB's shareholders that hold at least 5% of the capital stock represented by shares granting full voting rights, limited voting rights, or that have no voting rights. In this case, the action will only favour an SAB or, in certain cases, the company controlled by the SAB or in which the SAB has a significant influence, that suffers property damage.

The ordinary statute of limitations in commercial matters is ten years. However, the statute of limitations is five years for any actions derived from the by-laws and any corporate transactions in connection with any rights and obligations between the corporation and the shareholders (including any action among shareholders). The Securities Market Law expressly sets forth that an action for which accountability from the members of the board of directors is sought will be subject to a five-year statute of limitations, starting on the day on which the act or event causing the corresponding property damage occurred.

The Mexican Supreme Court's First Chamber recently confirmed that, under civil law, shareholders and partners may initiate individual actions against directors for acts or omissions that cause direct personal harm without the need to show damage to the company or comply with the requirements of other social actions, such as those set forth in the General Law of Business Companies. Please refer to **2.1 Hot Topics in Corporate Governance** for further information.

5.5 Disclosure by Shareholders in Publicly Traded Companies

Certain acquisitions of publicly listed securities trigger a disclosure obligation. A person or group of people who acquire, directly or indirectly, in one or several simultaneous or successive transactions of any nature, the common shares of a publicly listed company, resulting in a shareholding equal to or greater than 10% and less than 30% of such shares, will be obliged to disclose such circumstance.

If the acquisition was carried out by a group of people, they must disclose the individual holdings of each of the members of the group. Likewise, the acquirers must disclose whether they intend to acquire significant influence in the company.

If any related party (as defined by the Securities Market Law) of the publicly listed company increases or reduces its ownership stake in the company's capital stock by 5%, whether directly or indirectly, in one or several simultaneous or successive transactions of any nature, it must disclose such information to the public.

Furthermore, any person or group of people who directly or indirectly hold 10% or more of the shares representing the capital stock of publicly listed companies, as well as the members of the board of directors and relevant officers of such companies, must inform the National Banking and Securities Commission and, in certain cases, disclose to the public the acquisitions or transfers of such securities.

Likewise, shareholders are required to inform the publicly listed company of the execution of any shareholders' agreement so that the company can disclose it to the public. These agreements are not binding on the company, and their violation does not invalidate votes at shareholders' meetings. However, they are enforceable between the parties only after public disclosure.

Publicly listed companies are obligated to submit a report upon the initial registration of their securities and annually thereafter detailing the name and shareholding of several parties, including the companies and individuals that are beneficiaries, whether directly or indirectly, of 5% or more of the company's capital stock.

Disclosure must be made through the relevant stock exchange and under the terms and conditions established by such stock exchange.

6. Corporate Reporting and Other Disclosures

6.1 Financial Reporting

Companies must hold an annual general shareholders' meeting that must review and, if applicable, approve the following:

- a report by the board of managers on the company's performance during the preceding fiscal year, the policies followed by the directors, and the main existing projects, if any;
- a report stating and explaining the main accounting and information policies and criteria followed in the preparation of financial information;
- the company's annual financial statements; and
- a report prepared by the statutory auditor on the truthfulness and adequacy of the information submitted by the board of directors.

Failure to submit the annual report on a timely basis will be grounds for the general shareholders' meeting to remove the sole manager or the

members of the board of directors or the statutory auditors without prejudice to any action against them for any liabilities they may have incurred.

Within the 15 days following the date of the annual general shareholders' meeting, the shareholders may request that the financial statements be published on the electronic platform of the Ministry of the Economy. This is not a mandatory, and it is not customary.

Publicly listed companies must disclose periodic financial and accounting information set down mainly in the Securities Market Law and the General Provisions for Securities Issuers, based on the requirements and instructions stipulated therein. Among other things, this includes the submission of an annual report signed by the chief executive officer, as well as officers from the legal and financial departments of the company, and the external auditor. As discussed in **2.1 Hot Topics in Corporate Governance**, simplified issuers are required to disclose information, as provided for in the General Provisions applicable to Simplified Issuers.

6.2 Disclosure of Corporate Governance Arrangements

There is no legal requirement for private companies to disclose their corporate governance arrangements.

However, disclosure requirements for publicly listed companies include the following:

- continuous reports regarding corporate acts, resolutions adopted by corporate bodies and notices that must be given in compliance with the corresponding by-laws or other applicable provisions;
- reports on corporate restructurings such as mergers, spin-offs, acquisitions, or asset sales approved by the shareholders' meeting or the board of directors of the company; and
- shareholders' agreements.

6.3 Companies Registry Filings

Except for simplified corporations, business corporations are set up before a public notary. Companies' incorporation deeds must be registered before the Public Registry of Commerce. Any person who acts on behalf of the company before the corresponding registry is made will be joint and severally liable for any act carried out.

The Public Registry of Commerce maintains records for all registered companies, allowing the public to obtain copies that provide certain information on registered acts. However, copies of the actual registered documents are not publicly accessible. The provided information typically includes details such as changes in corporate name, registered corporate domicile, fixed capital amount, and granted powers of attorney, among others. However, it does not include the current shareholding structure of the company.

The Public Registry of Commerce is aimed at providing publicity regarding certain legal acts that must be registered to be effective against third parties. Unlike other Mexican authorities, it does not have surveillance powers.

Companies that have foreign shareholders must be registered before the National Registry of Foreign Investments (*Registro Nacional de Inversiones Extranjeras*).

Registered companies are required to do the following.

- Renew their registration annually by submitting a form containing their financial information. This requirement applies only if, at any point during the fiscal year, the company's total assets, liabilities, income, or expenses exceed MXN110 million (approximately USD6.5 million, using an exchange rate of MXN17 for USD1).
- File quarterly notices in the event of: (i) amendments to their corporate information; and (ii) changes in certain accounts exceeding MXN20 million (approximately USD1.2 million, using an exchange rate of MXN17 for USD1). These accounts include accounts receivable from or payable to foreign entities within the same corporate group, contributions from the holding entity, capital reserves, or results brought forward from previous years.

The threshold amounts that trigger the obligation to file periodic notices before the National Registry of Foreign Investments are subject to updates or modifications by the authority.

Companies failing to make the necessary filings before the National Registry of Foreign Investments will be subject to fines. No public information is available in connection with these filings.

7. Audit, Risk and Internal Controls

7.1 Appointment of External Auditors

Closely held companies are not required to appoint an external auditor. However, this appointment is mandatory for publicly listed companies since the external auditor plays a significant role in reviewing the company's financial information, which is periodically disclosed to the public.

The key requirements governing the relationship between the publicly listed company and the auditor are outlined in the Securities Market Law.

7.2 Requirements for Directors Concerning Management Risk and Internal Controls

There are no express provisions about the management of risk and internal controls for private companies.

In publicly listed companies, the board of directors must approve the internal control and internal audit guidelines and must follow up (whether directly or via the Audit Committee) on the company's main risks, identified based on the information presented by the committees, the chief executive officer, and the external auditor, as well as the accounting, internal control, and internal audit, registration, filing or information systems.

The audit committee of public companies is also obliged to inform the board of directors of the status of the internal control and internal audit system and any irregularities detected.

Publicly listed companies must disclose, annually and quarterly, any amendments made with respect to internal controls and audit. Such changes must have been previously approved by the board of directors and have been approved by the Audit Committee.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Rob.Thomson@chambers.com