

**International  
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Practical cross-border insights into corporate governance law

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# Mexico

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## 1 Setting the Scene – Sources and Overview

### 1.1 What are the main corporate entities to be discussed?

This chapter will focus on the *sociedad anónima bursátil* (“SAB”), the exclusive corporate form for Mexican listed companies and a modality of the *sociedad anónima* (“SA”), which is the most common type of commercial company in Mexico; we will also briefly refer to the *sociedad anónima promotora de inversión* (“SAPI”), another modality of the SA originally designed to accommodate private equity investments.

### 1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

All commercial companies, including SAs, are regulated by the General Law on Commercial Companies (*Ley General de Sociedades Mercantiles*; “GLCC”); as modalities of the SA, both the SAB and the SAPI have the GLCC as a general legal framework, and as their direct legislative source, the Securities Market Law (*Ley del Mercado de Valores*; “SML”).

Particular to the SAB, in addition to the SML, the primary sources regulating their corporate governance practices are regulations issued by the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*; “NBSC”), including the General Regulations applicable to Securities Issuers and Other Securities Market Participants (*Disposiciones de Carácter General Aplicables a las Emisoras de Valores y a Otros Participantes del Mercado de Valores*; the “Issuers Regulations”).

There are sectors with specific corporate governance regulations, in addition to those contemplated for SAs and SABs, which impose more stringent requirements for the corporate vehicles used; such is the case for the banking, pension fund and insurance industries.

Furthermore, many SAs turn to the Code of Best Corporate Practices (*Código de Mejores Prácticas Corporativas*; the “Code”) issued by the Business Coordinating Council (*Consejo Coordinador Empresarial*) in 1999, the third version of which has been in effect since 2018, as a complementary source of guidance for the prevailing corporate governance principles applied by the OECD member states.

### 1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

The SML entered into force in 2006 to update the Mexican regulatory framework applicable to the securities market and

to SABs according to international standards, by including new rules for disclosure, minority rights, fiduciary duties, and corporate powers and authorities, and introducing the notion of a single economic unit to encompass SABs and the entities under their control. Moreover, these amendments also contemplated the creation of the SAPI, introducing a novel and flexible corporate structure with corporate governance features that reflected market practices and common contractual arrangements used by investors, such as the easy implementation of By-laws’ provisions and the application of specific performance of corporate governance and contractual covenants among shareholders.

SAPIs became a widely used corporate vehicle, displacing SAs for most private equity investments, until a significant revision was made in 2014 to the SA’s archaic legal framework to update its corporate governance provisions, mainly to adopt substantially all of the SAPI’s innovative rules – which were originally exceptions to the SA’s regime. The main distinctions between SAs and SAPIs are centred on SAs generally not being allowed to repurchase their shares, that their shareholders may not agree to non-compete provisions *vis-à-vis* the corporation, and that they have weaker minority rights.

Today, SAs and SAPIs continue to be the corporate vehicles of choice for private investments and the SAB the available company form for accessing public markets.

Much needs to occur on the private front in the natural evolution of enterprises that have adopted the SA form, but they still need to insert in their corporate structure current international corporate governance standards, and in the public arena, the enlargement of Mexico’s stock markets – in both size and depth – could generate the impulse required to bring to them the trends existing in more sophisticated markets, including:

- Professionalising the appointment of Directors (including age, gender and expertise by industry) and top management.
- Directors and top management compensation.
- Risk management.
- Balancing short-term results and long-term value creation.
- Regulating shareholder activism.

### 1.4 What are the current perspectives in this jurisdiction regarding the risks of short termism and the importance of promoting sustainable value creation over the long term?

Even though there are no clear perspectives on reducing the risks of short-termism, regulations of certain industries, such as insurance, provide the basis for sustainable long-term value creation. Likewise, promotion of sustainable value creation will likely come from the investment targets of pension funds and within Board of Directors that perceive the pressure of short-termism and the negative effects caused by it.

## 2 Shareholders

### 2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

Shareholders do not have any specific rights or powers in the strategic direction, operation and management of a SAB (or of any SA), since those are expressly vested in the Board of Directors, its committees and the General Director (or CEO) of the corporate entity. Notwithstanding the foregoing, besides the direct influence that may be exercised by shareholders on the corporate bodies and top management, and the indirect leverage that could be exerted on such individuals, major strategic matters require approval by the shareholders, whose decisions in turn may have an impact on the direction and operation of the corporate entity in which they are invested.

### 2.2 What responsibilities, if any, do shareholders have with regard to the corporate governance of the corporate entity/entities in which they are invested?

Separately from their duties as described in question 2.4 below, shareholders do not have any responsibilities in relation to the corporate governance of either a SAB or SA.

### 2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have with regard to such meetings?

Shareholders' Meetings can be of two kinds: Ordinary and Extraordinary Meetings. Ordinary Shareholders' Meetings are held to discuss day-to-day matters, any matter not reserved to Extraordinary Meetings and annually, within the first four months of each fiscal year, (i) the approval of the Board of Directors report in connection with the operations of the company during the last year, which includes the financial statements, (ii) the approval of the Statutory Auditor report, (iii) the application of the financial results during such period, and (iv) the appointment and compensation of the Directors and Statutory Auditor.

Matters involving the organisational structure of the company, such as its duration, dissolution, increases or reductions of capital stock, nationality, corporate purpose, transformation, merger and spin-off, as well as any amendment to the By-laws and matters for which the law requires a special quorum, are reserved to Extraordinary Meetings.

In addition to the matters set forth in the GLCC for all SAs, the Shareholders' Meeting of a SAB must approve any transaction that represents 20% or more of its consolidated assets.

At such Meetings, shareholders shall be entitled to one vote per each share they hold; however, the By-laws may provide for classes or series of shares that may grant different rights (e.g., limited voting, non-voting, preferred shares). Also, shareholders have the right to be informed on relevant matters regarding the company's operation. Further, even though as explained in question 2.8 below, under Mexican law shareholder activism is not regulated, shareholders can: (i) request the Board of Directors, Statutory Auditor or even a judge to call a Meeting to assure that their rights are protected, Meetings are regularly held and Annual Meetings are convened; (ii) postpone the voting at Meetings when not sufficiently notified; and (iii) oppose and contest resolutions adopted at Meetings.

### 2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

The only duty shareholders owe to the corporate entity and other shareholders is a fiduciary duty of loyalty, as they must refrain from deliberating or voting on matters in which they have a conflict of interest.

With respect to their liability for acts or omission of the corporate entity, shareholders are only liable for the amount of their capital contributions; however, under certain circumstances in the case of tax claims, it is possible to pierce the corporate veil of a company.

There are no stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested.

### 2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

The SML sets forth a civil liability legal action against Directors and relevant officers of SABs, which can be exercised either by the corporate entity or its shareholders who own at least 5% of the capital stock. The SML further establishes that, under certain circumstances and when acting in good faith, Directors will be excluded from such liability.

In SAs, shareholders representing 25% of the capital stock may initiate a civil liability legal action against Directors, when: (i) the claim includes the total amount of liabilities incurred by the Directors in favour of the SA, and not only the amount corresponding to the plaintiffs' personal interest; and (ii) the plaintiffs voted against the Shareholders' Meeting's resolution whereby it was agreed to release Directors from their liabilities.

### 2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

Disclosure obligations exist for any person or group of persons who acquires shares representing 10% or more, but less than 30%, of the capital stock of a SAB, as well as for that person or group of persons who hold 10% or more of the capital stock of a SAB, members of the Board of Directors and top management who acquire or transfer their respective shareholdings.

Furthermore, related parties to a SAB shall disclose any increase or decrease of 5% in their equity participation.

### 2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

Mexican law does not require disclosure with respect to intentions, plans or proposals of shareholders with respect to corporate entities in which they are invested. However, shareholders owning 10% or more of the capital stock of a SAB and related parties to a SAB when acquiring shares shall disclose their intention whether or not to reach a significant position of influence within the company. Also, SABs shall generally disclose

any material event as soon as they become aware of it, and the Regulations provide an illustrative list of material events, which include any designation or removal of members of the Board of Directors and Committees or of relevant officers, and the approval of any amendments to the By-laws.

### 2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Due to the highly concentrated shareholdings at the control level of SABs and the relatively modest size of our stock markets, shareholder activism is practically non-existent and therefore not regulated.

## 3 Management Body and Management

### 3.1 Who manages the corporate entity/entities and how?

In SAs, the Board of Directors and its committees (or Sole Administrator, as the case may be) has the authority to carry out all acts directly related to the business of the SA, bearing in mind that the shareholders may limit such authority in the By-laws.

In SABs the Board of Directors is expressly released from handling day-to-day activities. The General Director or CEO is in charge of (i) the day-to-day activities of the SAB, (ii) the existence of accounting, internal audit and control systems, (iii) surveying compliance with the Board of Directors and Shareholders' Meeting resolutions, and (iv) disclosure of material information, and is fully empowered by law to proceed with such management responsibility.

Furthermore, the activities, operations and business of SABs are entrusted to the Board of Directors, which will carry out such activities with the assistance and support of the Corporate Practices Committee, the Audit Committee and other special purpose committees created to focus on specific tasks, such as compensation and risk management (collectively, the "**Committees**"), and the external auditor.

The Corporate Practices Committee is responsible for supporting the Board of Directors in drafting the annual reports to be submitted to the Shareholders' Meeting, as well as rendering its opinion with respect to related party transactions and the appointment and compensation of the CEO and other relevant officers. The Audit Committee's main functions are to coordinate the external auditor activities and evaluate its performance, review the financial statements, inform the Board of Directors of the status of internal controls and accounting procedures, investigate any possible breaches of operational guidelines and policies, internal control systems and accounting records of the SAB, and oversee that appropriate mechanisms and internal controls are adopted to comply with applicable laws and regulations.

### 3.2 How are members of the management body appointed and removed?

#### Boards of Directors

In SAs and SABs, the Ordinary Shareholders' Meeting appoints and removes members of the Board of Directors. In a SAB, the Board of Directors comprises no more than 21 members, of which 25% must be independent. One alternate member may be appointed for each proprietary member, provided that the alternates for the independent members are also independent. Directors shall be removed or have their resignation accepted by the Ordinary Shareholders' Meeting, with the understanding

that in case a minority shareholder appoints a Director, he/she may only be removed by such shareholder. Shareholders holding 10% of the capital stock have the right to appoint a Director, and for SAs such percentage is increased to 25%.

#### Committees

In SABs, Committees are formed by at least three independent Directors appointed by the Board of Directors, from the Directors proposed by the Chairman of the Board. In case the SAB is controlled by a person or group of persons, the Corporate Practices Committee will be formed by a majority of independent Directors. The Chairman of each Committee shall be appointed and removed exclusively by the Shareholders' Meeting, provided that he/she does not act as Chairman of the Board of Directors, and must be selected based on his/her experience, capacity and prestige.

### 3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

In the SA and SAB, the Ordinary Shareholders' Meeting annually determines the compensation of the members of the Board of Directors.

In a SAB, the Board of Directors shall determine the compensation of the CEO and relevant officers, taking into account the views of the Corporate Practices Committee.

Both in SAs and SABs there is no limitation as to the amount or type of compensation that can be paid to Directors, the CEO and other relevant officers.

### 3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

The members of the Board of Directors and relevant officers of a SAB shall disclose to the NBSC and, when applicable, to the general public, any acquisition or transfer of the shares they hold in the SAB when such shares represent 10% or more of the capital stock of the SAB.

### 3.5 What is the process for meetings of members of the management body?

SABs' Boards of Directors shall hold at least four Board Meetings each fiscal year.

The Chairman of the Board of Directors or of any of the Committees, or 25% of the Directors of the SAB, may call a Board Meeting and include in the agenda any matter that they deem convenient.

Unless otherwise provided in SAs' or SABs' By-laws, the attendance quorum for Board of Directors Meetings is that 50% of its members and resolutions thereat may be validly adopted by the majority of the Directors attending such meeting. In case of a tie, the Chairman of the Board of Directors has the decisive casting vote. Board of Directors resolutions may be adopted outside a meeting if such resolutions are voted on unanimously and further confirmed in writing.

### 3.6 What are the principal general legal duties and liabilities of members of the management body?

The SML sets forth the following fiduciary duties upon members of the Board of Directors and Committees, the CEO and relevant officers of SABs:

### Duty of care

The members of the Board of Directors and Committees, the CEO and relevant officers shall act in good faith and in the best interest of the SAB. A breach of the duty of diligence results in civil liability for any damages and lost profits caused to the SAB, when such individuals:

- (i) Fail to attend a Meeting and, as a result of such absence, the corporate body cannot convene.
- (ii) Fail to reveal to the Board or Committee any relevant information known by them, which is deemed necessary for the discussion and further resolution at such bodies.
- (iii) Fail to perform any of their duties under the SML or the By-laws.

Any of the Board and Committee members, the CEO and relevant officers who breach their duty of care shall be jointly liable before the SAB. However, the Shareholders' Meeting and the By-laws may limit their liability, as long as the breaching acts were not fraudulent, illegal or in bad faith.

### Duty of loyalty

The members of the Board of Directors and Committees, the Secretary of the Board, the CEO and relevant officers of SABs shall maintain confidentiality in connection with all the information available to them derived from their positions. Furthermore, they shall abstain from participating and being present in the discussion and voting of any item where they have a conflict of interest. It is understood that such individuals incur in a breach of their duty of loyalty, if they:

- (i) Favour any particular shareholder or group of shareholders at the expense of the rest of the shareholders.
- (ii) Approve any transactions involving the SAB and any related parties in breach of the provisions of the SML.
- (iii) Take advantage, for his/her benefit or for the benefit of third parties, without the approval of the Board of Directors, of any business opportunity for the SAB.

#### 3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

The main specific corporate governance responsibilities of the members of the Board of Directors are to:

- (i) Establish the general strategies for the operation of the SAB's businesses.
- (ii) Monitor the management of the SAB, as well as the performance of the relevant officers.
- (iii) Appoint or remove the CEO, as well as approve his/her compensation, including the policies for the appointment and compensation of the relevant officers.
- (iv) Approve, having listened to the opinion of the Audit Committee, the policies and guidelines for the use of the assets of the SAB, any related party transaction and any transaction outside the ordinary course of business or which amount represents the purchase or sale of 5% or more of the company's assets, and the granting of liens representing more than 5% of the company's assets.
- (v) Approve any waiver to be granted to a member of the Board of Directors or relevant officer to exploit a business opportunity of the SAB.

Directors are liable for the actions taken under their tenure and have a confidentiality obligation for at least one year following the termination of his/her office. Furthermore, Directors are also exposed to joint and several liabilities with respect to the SA for: (i) the actual existence of the shareholders' contributions;

- (ii) the satisfaction of the requirements to distribute dividends;
- (iii) the existence and maintenance of the SA's accounting, control, registry and information systems;
- (iv) the strict compliance with the Shareholders' Meetings' resolutions;
- (v) separating the amounts required for the statutory capital reserve from the net profits account;
- (vi) damages caused to the SA resulting from authorising the acquisition by the SA of its own stock; and
- (vii) any actions taken after the SA has been dissolved or a cause for dissolution has occurred. The absence of a Director from the Board Meeting would not suffice to release him/her from these liabilities.

#### 3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

Although not common in Mexico's corporate practice, there is no legal prohibition regarding granting indemnity to the Board of Directors.

Insurance coverage for members of the Boards of Directors and Committees is standard practice, more so when such corporate bodies have independent members. Such insurance policies do not cover liability for damages resulting from fraudulent, bad faith or illegal actions. Similarly, note that any liability arising from the duty of loyalty may not be covered by insurance policies.

#### 3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

As mentioned before, one of the main roles of the Board of Directors is to establish and revise, when required, the general strategies for the operation of the SAB's businesses.

## 4 Other Stakeholders

#### 4.1 May the board/management body consider the interests of stakeholders other than shareholders in making decisions? Are there any mandated disclosures or required actions in this regard?

The Board of Directors may consider the interests of stakeholders other than the shareholders; however, there are no required disclosures or actions in this regard.

#### 4.2 What, if any, is the role of employees in corporate governance?

There are no requirements under Mexican law for employee or union representation on Boards of Directors or Committees.

#### 4.3 What, if any, is the role of other stakeholders in corporate governance?

Other stakeholders have no formal role in the corporate governance of either the SAB or the SA; however, there is a nascent trend in SABs to take them into account by their Boards of Directors.

#### 4.4 What, if any, is the law, regulation and practice concerning corporate social responsibility and similar ESG-related matters?

There is no legal nor regulatory provision regarding compliance with corporate social responsibility for SAs or SABs.

Notwithstanding, due to increased awareness, such compliance is becoming a natural and required topic to be addressed at shareholders' and Boards of Directors' discussions. For example, the Mexican Centre for Philanthropy grants a certification to companies that comply with certain social sustainability, and recently BIVA, the second Mexican stock exchange, alongside FTSE Russell, launched FTSE4Good, the first index in Mexico with a global standard of companies that meet environmental, social and corporate governance requirements.

Notwithstanding the lack of regulation on ESG-related matters, there have been comprehensive efforts by Government institutions and stock exchanges advocating the adoption of ESG principles in corporate and business practices:

- The Mexican Central Bank (*Banco de México*) prepared a report with the purpose of incorporating environmental and social risks in the traditional risk assessment strategies of Mexican financial institutions.
- The NBSC and the Biodiversity Finance Initiative (BIOFIN) of the United Nations Development Program (UNDP) are working closely toward the integration of sustainability criteria, including ESG principles, in the financial system.
- The Mexican stock exchange issued a sustainability guide including elements that will serve for self-assessment, taking into account ESG principles.
- BIVA is launching a technological platform to help companies move forward in the implementation of ESG principles, with a mechanism to consolidate data in order to identify whether companies are making progress in adopting such principles.

It is worth mentioning that most (if not all) SABs and numerous SAs have adopted internal ESG policies and appointed officers responsible for supervising compliance with ESG principles and standards.

Even though they do not apply to SAs or SABs, the General Provisions on Financial Matters of the Retirement Savings Systems (*Disposiciones de carácter general en materia financiera de los Sistemas de Ahorro para el Retiro*) recently provided that, with respect to investment companies specialised in retirement funds, ESG policies shall be applied in their methodologies and measurement processes for credit evaluation of their risk committees and management policies. Likewise, it further provided that their investment committees must include ESG principles in their investment analysis.

## 5 Transparency and Reporting

### 5.1 Who is responsible for disclosure and transparency and what is the role of audits and auditors in these matters?

The SAB is responsible for disclosure and transparency. Disclosure and reporting obligations are undertaken by the Board of Directors and the CEO. The Board of Directors shall refrain from hiding or omitting any relevant information from the general public, shareholders or holders of securities, including all information necessary to become aware of its current financial, administrative, operative, economic and legal situation, as well as any risks associated thereto. The CEO shall refrain from filing or disclosing incorrect information or information that results in errors.

External auditors must be appointed in SABs to assist the Board of Directors in its surveillance duties, to exercise its essential function of reviewing and verifying the annual financial statements and reports, and to prepare a detailed statement with the results of their audit. All information and documentation used to prepare their reports must be retained by external auditors for a period of at least five years. External auditors must be honourable, meet the personal and professional requirements established by the NBSC, as well as the independent criteria inherent to their position, by complying with the criteria established by the NBSC.

At the end of April of each year, each SAB shall disclose to the NBSC and the corresponding stock exchange a document executed by its external auditor in which it is stated that the audited financial statements were prepared pursuant to the International Financial Reporting Standards, and that within the scope of its audit there is no indication that the audited financial statements contain errors or inconsistencies. In case that in the performance of their duties as external auditors there is evidence of inexcusable negligence, they omit relevant information or incorporate false information, recommend the execution of transactions that could affect the companies' patrimony, or approve or propose a transaction that goes against accounting principles recognised by the NBSC, they will be held liable for any damages caused.

### 5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

SABs shall disclose to the NBSC and the corresponding stock exchange:

- (i) Annually, no later than three business days after the annual Ordinary Shareholders' Meeting is held, audited financial statements of the SAB with the corresponding report issued by the external auditor.
- (ii) On the same day of its publication, the call to any Shareholders' Meetings.
- (iii) On the immediately following business day to each Shareholders' Meeting, a summary of the resolutions adopted thereat.
- (iv) Within five business days following any Shareholders' Meeting, a copy of the Minutes of the Meeting and the attendance list, certified by the Secretary of the Board of Directors.

At least six business days prior to the date on which the following acts are carried out:

- (i) Notice to the shareholders of the exercise of the pre-emptive rights derived from capital increases.
- (ii) Share delivery or share exchange notice.
- (iii) Dividend payment notice.
- (iv) Any other notice addressed to the shareholders or the general public.

Every three years, not later than 30 June, a public deed containing the notarisation of the Shareholders' Meeting by means of which the transcript of the SAB's By-laws is approved, including such transcript, must be published.

In addition to the foregoing, SABs shall disclose on their websites the transcripts of their current By-laws, the annual, quarterly and monthly reports to the NBSC, as well as corporate restructurings and material events.

**5.3 What are the expectations in this jurisdiction regarding ESG- and sustainability-related reporting and transparency?**

As discussed in our response to question 4.4 above, there are no regulations regarding ESG and sustainability applicable to SAs and SABs; therefore, no related reporting and transparency

obligations exist in Mexico. However, SAs and SABs are actively including in their annual reports non-financial information pertaining to ESG and sustainability activities and internal policies and compliance thereof. Also, as mentioned above, the appointment of ESG officers at SAs and SABs responsible for supervising and reporting ESG compliance has increasingly become a common corporate and business practice.





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Cartels & Leniency  
Class & Group Actions  
Competition Litigation  
Construction & Engineering Law  
Consumer Protection  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Investigations  
Corporate Tax  
Cybersecurity  
Data Protection  
Derivatives  
Designs  
Digital Business  
Digital Health  
Drug & Medical Device Litigation  
Employment & Labour Law  
Enforcement of Foreign Judgments  
Environment & Climate Change Law  
Environmental, Social & Governance Law  
Family Law  
Fintech  
Foreign Direct Investment Regimes  
Franchise  
Gambling  
Insurance & Reinsurance  
International Arbitration  
Investor-State Arbitration  
Lending & Secured Finance  
Litigation & Dispute Resolution  
Merger Control  
Mergers & Acquisitions  
Mining Law  
Oil & Gas Regulation  
Patents  
Pharmaceutical Advertising  
Private Client  
Private Equity  
Product Liability  
Project Finance  
Public Investment Funds  
Public Procurement  
Real Estate  
Renewable Energy  
Restructuring & Insolvency  
Sanctions  
Securitisation  
Shipping Law  
Technology Sourcing  
Telecoms, Media & Internet  
Trade Marks  
Vertical Agreements and Dominant Firms