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Briefing, analysis, opinion and insight of legal affairs in Mexico. Digital publication by Abogados Sierra



March 15, 2018 year 07 | No. 04

Simplifying the process for the dissolution of corporate entities in Mexico.

A reform aiming for Mexico's regulatory improvement.

by Carlos Sierra in collaboration with Gabriela Espinoza and Miguel Ruelas

February and March NEWS on Mexican Commercial Law

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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

Simplifying the process for the dissolution of corporate entities in Mexico. A reform aiming for Mexico's regulatory improvement.

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Incorporating a business is often a sophisticated endeavor that may well test the patience of any entrepreneur. Governments understand that imposing regulatory barriers that delay the effective and prompt incorporation of a business scares investors, and results in deprecating scores in attracting capital and investment into a country. This principle, is well-known and studied by governments, investors and non-profit economic organizations that rate 'doing business' factors worldwide.

"The importance of the amendments to this law, are a sophisticated effort to simplify the process for the dissolution and liquidation of companies through an easier, effective, and -most importantly- cost free process".

As regulatory agencies, governments and businessmen focus on the initial steps of starting a company; the dissolution of a company is a step that is often overlooked and ignored, with dangerous results, given that the final step of closing a business may well impose complicated and exaggerated regulatory and legal requirements that may financially impact a business beyond imaginable costs.

As part of the structural reforms ("*reformas estructurales*")¹ enacted by the current Mexican administration, one of the multiple objectives of this regulatory improvement project was to establish simpler and transparent regulations that would ease all steps of starting, and of course, terminating a business. With this in mind, on January 24, 2018 a decree reforming the General Law on Mercantile Companies ("*Ley General de Sociedades Mercantiles*"), was published in the Federal Official Gazette ("*Diario Oficial de la Federación*").² The importance of the amendments to this law, are a sophisticated effort to simplify the process for the dissolution and liquidation of companies through an easier, effective, and -most importantly- cost free process. In accordance with the reform initiative, "the objective is to facilitate the closure and dissolution process, protecting judicial obligations and promoting regulatory improvement in Mexico".³

The reform is a continuance of the previous amendments made to the General Law on Mercantile Companies in 2016,⁴ which purpose was to facilitate the constitution and incorporation of companies

1- The "*reformas estructurales*" was a plan enacted by the current Federal administration at the beginning of the administration, which aimed to: i) elevate the productivity and economic growth of the country; ii) strengthen civil rights, and iii) strengthen economic and democratic liberties. In order to achieve these three objectives, the regulatory improvement of business, economic development and competition, energy rights, corruption and labor law where enacted. The content of this article pertains to the second step of an initial regulatory improvement on business and corporate regulations.

2- Decree by which the General Law on Mercantile Companies ("*Ley General de Sociedades Mercantiles*") is reformed and amended. Published in the Federal Official Gazette on January 24 2018. http://www.dof.gob.mx/nota_detalle.php?codigo=5511250&fecha=24/01/2018.

3- As described in the Legislative proposal project: http://www.senado.gob.mx/sgsp/gaceta/63/3/2017-09-28-1/assets/documentos/PAN_Senadores_diversos_Soc_Mercantiles.pdf

4- Referencia en el DOF

in an expedite, efficient and economic manner. After the success of these new regulations, the Mexican government took the task to provide equivalent incentives and improvements to the final stage of a company's life.

The reform pretends to grant legal certainty and effective regulation to all businesses and, particularly to entrepreneurs that may fail in their corporate plans, by establishing a clear road without the barriers that often discourage companies and entrepreneurs to fulfill all obligations upon the termination of their company.

In accordance with the Economic Commission of the Mexican Congress and the Public Registry of Property and Commerce, 6 out of 10 companies do not report or conclude the legal steps required for their appropriate dissolution.⁵ This statistic is no surprise, given that prior to the reform, the dissolution of a company, involved transactional costs three times superior to those required to open a company, with an average of over \$40,000.00 Mexican pesos and a procedure that could take up to 2 years.⁶

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In order to analyze the importance and particularities of this reform, it is imperative to note, that not all companies may benefit from this expedite form of corporate dissolution. In accordance with the reform, only those companies that fulfill the requirements under article 249 Bis of the General Law on Mercantile Companies may be granted these benefits. These requirements are:

- That the company's shareholders are exclusively natural persons;
- That the company is not under dissolution for having an illegal purpose or having committed illicit acts;
- That the company has filed its shareholding structure, in accordance with the law and before the Electronic Publication System of Mercantile Companies ("*Sistema Electrónico de Publicaciones de Sociedades Mercantiles*")⁷;
- That the company is no longer operating and has not issued any electronic invoice for the past two years;
- That the company has complied with all labor, tax and social security obligations established by the applicable laws;
- That the company has no debt against third parties and is not under any insolvency proceeding, including that their legal representatives are not subject to criminal proceedings; and,
- That the company is not part or a purveyor in the Mexican financial system.

5.- Law originally published in the Federation's Official Gazette on August 4, 1934. http://www.diputados.gob.mx/LeyesBiblio/pdf/144_240118.pdf

6.- In accordance with the study commissioned by the legislative proposal per official governmental indices and numbers: <http://gaceta.diputados.gob.mx/PDF/63/2017/dic/20171212-X.pdf#page=99-132>

7.- https://www.gob.mx/cms/uploads/attachment/file/105607/2.2.9_Publicaciones_de_Sociedades_Mercantiles.pdf

By complying with the aforementioned requirements, then, a series of barriers that complicated the legal termination process of a company were eliminated per the reform to article 249 Bis 1 of the General Law on Mercantile Companies. The requirements that have been eliminated are:

- That it is no longer necessary to present and register the company's minutes for the dissolution and liquidation of the company before the Public Registry; and,
- That it is no longer necessary to obtain certification by a public notary of any of the articles and documents associated with the dissolution of the company, which often increased the transactional costs and delayed an already timely process.

In addition to the now eliminated lengthy and time-consuming requirement, the process to dissolve a company is expedited with the following new regulations:

- Stakeholders may now solely and with no further formalities or third parties, appoint a liquidator, so long as, the name of the liquidator is electronically filed in the electronic registry for liquidators of the Secretary of Economy ("*Secretaría de Economía*")⁸ within 5 business days after the dissolution of the company is approved by the board⁹;
- The liquidator now, shall distribute any remaining monies to the shareholders within 45 business days after being appointed;
- The final balance-sheet terminating the existence and monetary obligations of the company shall be published no longer than 60 business days after the dissolution and liquidation resolution of the company; and,
- The cancellation of all registries pertaining to the company's existence and operations are no longer responsibilities imposed to the dissolving company, but rather an obligation of the Secretary of Economy, which shall proceed to cancel all registries.¹⁰

Whilst the true impact of the reform is still unknown, as it will not enter into effect until the 25th of July 2018, facilitating the process for the dissolution of a company, may well impact regulatory compliance in Mexico. Expediting the process and substantively reducing the costs will most definitely provide a clear panorama to investors, entrepreneurs on all steps of forming and dissolving a company in the country.

As mentioned above, this reform is the second step of the initial regulatory improvement project regarding business regulations in Mexico. In accordance with the Doing Business Index, by the World Bank, an index which measures business regulations worldwide, Mexico improved 18% after the reform to simplify the incorporation of business regulations was introduced in 2016.¹¹ Therefore, once this reform is in full force and effect, we can expect higher legal certainty to business owners in Mexico promoting higher levels of investment.

8.- Regulation foreseen under Article 50 of the Federal Commercial Code.

9.- This electronic registry is available 24/7, 7 days a week and permits an expedite registry process with no further formalities.

10.- <http://gaceta.diputados.gob.mx/PDF/63/2017/dic/20171212-X.pdf#page=99-131>

11.- <http://www.doingbusiness.org/data/exploreconomies/mexico>

Drones guard against pipeline fuel theft.

Guarding petroleum pipelines against theft is going high-tech in Querétaro with the deployment of a fleet of drones designed and built by students at the state's University of Technology. The first three pipeline surveillance drones are now aiding security and Civil Protection task forces in the Corregidora municipality, located on the Guanajuato border near Apaseo el Alto, an area where illegal pipeline tapping is a recurring crime. <https://mexiconewsdaily.com/news/drones-guard-against-pipeline-fuel-theft/> 15/02/2018.

Mexican political parties officially nominate presidential candidates.

Mexico's political parties officially nominated their presidential candidates, who will face off in the July 1 election to succeed President Enrique Peña Nieto. Jose Antonio Meade was officially declared to be the presidential candidate of the Institutional Revolutionary Party, which heads the "Todos por Mexico" coalition with the Green Party and the New Alliance party. Ricardo Anaya was proclaimed the presidential contender for the "Por Mexico al Frente" coalition comprised by the National Action Party and the leftist Democratic Revolution and Citizens Movement parties. Andres Manuel Lopez Obrador was confirmed as the presidential candidate of the coalition comprised of the National Renewal Movement and the Labor and Social Encounter parties. <https://www.efe.com/efe/english/portada/mexican-political-parties-officially-nominate-presidential-candidates/50000260-3527866> 19/02/2018.

Mexico supreme court says competitors can use America Movil's network.

Mexico's Supreme Court ruled on Wednesday that Mexican mogul Carlos Slim's America Movil must allow competitors to use its network and infrastructure, essentially holding up aspects of the 2014 telecoms reform. The court said the obligation imposed by the reform on America Movil, Mexico's largest telecommunications firm, to lend interconnection services to competitors does not violate its rights. "Because the constitutional decree itself recognized that there are certain obligations that are imposed on the preponderant economic agent, which will expire once there are conditions of real competition in the market," it said. <https://www.reuters.com/article/us-mexico-telecoms/mexico-supreme-court-says-competitors-can-use-america-movils-network-idUSKCN1G60EO> 21/02/2018.

Mexico financial technology law passes final hurdle in Congress.

Mexico's lower house of Congress approved a bill to regulate the fast-growing financial technology sector. The bill addresses crowdfunding and cryptocurrency firms, putting Mexico amongst a small group of countries to establish regulation for the industry. The bill, which seeks to promote financial stability and prevent money laundering, was approved by Mexico's Senate in December and now awaits President Enrique Peña Nieto's signature. <https://www.reuters.com/article/us-mexico-fintech/mexico-financial-technology-law-passes-final-hurdle-in-congress-idUSKCN1GD6KX> 01/03/2018.

Trump Uses Tariffs as Threat in Nafta Negotiations.

President Donald Trump has suggested he may exempt Mexico and Canada from his controversial tariff plan if they comply with his wishes on a major trade agreement. As negotiators in Mexico City entered their final day of talks on the North American Free Trade Agreement (Nafta), Mr Trump tweeted: "NAFTA, which is under renegotiation right now, has been a bad deal for U.S.A. Massive relocation of companies & jobs. Tariffs on Steel and Aluminium will only come off if new & fair NAFTA agreement is signed." https://www.nytimes.com/2018/03/05/us/politics/trump-trade-tariffs-nafta.html?rref=collection%2Ftimestopic%2FMexico&action=click&contentCollection=world®ion=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection 05/03/2018.

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LANGUAGES: Spanish and English.

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