

# **PROPOSED NEW MEXICAN STOCK MARKET LAW**

By

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On April 5, 2005, the Mexican administration sent the Congress a proposal to create a new Stock Market Law, replacing the current law dating from 1975. The bill was promptly approved by the Mexican Senate by a 77-1 vote and will be considered by the Chamber of Deputies during the Mexican Congress' next period of ordinary sessions beginning on September 1<sup>st</sup>.

The proposed law adopts a number of measures aimed at increasing the relevance of the Mexican stock market, the Bolsa. Currently, only about 150 companies are listed on the Bolsa and, of these, no more than 80 trade on any given day. This level of activity is far below that seen in other comparable economies. Commonly cited reasons for this anemic performance are the difficult regulatory hurdles that companies must overcome in order to list their shares and the scant protection for minority shareholders' rights offered by Mexican corporate law.

The proposed new Stock Market Law aims to remove these barriers by creating a new class of companies that may sell shares on the Bolsa without complying with the full panoply of currently-existing regulations as well as improve corporate governance and minority shareholders' rights among all companies that sell shares on the Bolsa. The law also increases the power of the regulatory authorities, lengthening the statute of limitations for certain offenses and permitting the regulators to publicly announce disciplinary measures when they are taken, rather than waiting for drawn-out court proceedings to finish.

## **The New Sociedad Anónima Promotora de Inversión**

The proposed law permits the creation of a new type of company called a Sociedad Anónima Promotora de Inversión Bursátil (Stock Investment Promotion Company, or "SAPIB"). If a company is created as a SAPIB, it will be able to list its shares on the Bolsa without having to comply with all of the reporting requirements currently imposed on publicly-traded companies. However, companies can only list as SAPIB's for a maximum of three years before moving on to the ordinary regime, and their shares can only be sold to certain qualified and institutional investors, subject to certain regulations that will be issued in the future.

Among other characteristics, SAPIB's will provide significant protections for minority shareholders, permitting them, for example, to name a member of the Board of Directors or call a shareholders' meeting if they own at least 10% of the company's outstanding shares. Minority shareholders will also have recourse to the courts against company actions that unfairly prejudice their interests. SAPIB's will also be obligated to have Boards of Directors, and will not be able to opt for administration by a Sole Administrator, as ordinary Mexican corporations may do. Thus, significant minority shareholders will be guaranteed a voice in the company's administration, since they will be represented on the Board of Directors.

Finally in this regard, the proposed law explicitly permits SAPIB's to include shareholders' agreements in their bylaws with respect to issues such as limitations on sales of shares and shareholder voting agreements. Such agreements are prohibited by the Federal Companies' Law for ordinary Mexican companies, although in practice company bylaws sometimes contain the equivalent of shareholders' agreements.

#### Measures Affecting Other Listed Companies

The proposed law also includes various measures that will apply to all listed companies:

- (a) Listed companies will now have to give detailed information regarding their subsidiaries' results
- (b) Chief executive officers will have direct legal responsibility for their companies' day-to-day operations and accounting records, leaving boards of directors with responsibility for strategic decisions only
- (c) The figure of the statutory auditor, or *comisario*, is abolished. The statutory auditor's functions will be taken over by the company's outside auditor.
- (d) A type of Business Judgment Rule is adopted to shield the officers and directors from liability for their good faith decisions
- (e) Shareholders owning at least 5% of the company's shares will have access to the courts to challenge decisions made by the officers or directors that allegedly prejudice their interests.

In sum, if and when it becomes law, the new Stock Market Law will significantly modernize corporate governance and increase minority shareholders' rights for all listed companies, as well as ease requirements for smaller companies to be listed.