

NEW TYPE OF BUSINESS ENTITY CREATED IN MEXICO

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On March 14, 2016, amendments to the General Law on Business Entities (*Ley General de Sociedades Mercantiles*, or LGSM) were published in the federal official gazette (*Diario Oficial de la Federación*). These amendments, which will enter into force on September 15, 2016, recognize a new type of business entity in addition to the six that are already recognized in the LGSM¹ – the *Sociedad por Acciones Simplificada* (SAS), or Company by Simplified Shares.

The stated purpose of the SAS as set out in the legislative debates preceding the adoption of the amendments is to encourage the creation of new formal companies through the implementation of an efficient mechanism that will reduce the high cost of company formation in Mexico. These amendments were adopted against a backdrop of rampant informality in the Mexican economy, where more than half of all workers are not part of the formal sector of the economy.

The idea of the SAS is to create a kind of transitional entity that will serve small and start-up companies. SAS's which grow beyond a certain size will be expected to transform themselves into a different kind of entity.

¹ It should be noted that of these six, only three are commonly utilized – the *Sociedad Anónima*, the *Sociedad de Responsabilidad Limitada* and the *Sociedad Cooperativa*. The other three are the *Sociedad en Nombre Colectivo*, the *Sociedad en Comandita Simple* and the *Sociedad en Comandita por Acciones*.

Characteristics of the SAS

The SAS will have a number of characteristics that mark a significant break from current Mexican corporate practice:

- The SAS may be formed by one or more shareholders, as opposed to other Mexican business entities, which must be formed by a minimum of two shareholders;
- The SAS may be formed without the participation of a notary public or *corredor publico* (commercial broker),² thus significantly lowering the cost of creating a new company, since the fees charged by notaries and commercial brokers often constitute the largest part of the cost of forming a company in Mexico;
- It will be possible to create an SAS in just one day, since individuals will be able to create the company directly by utilizing an on-line system to be run by the Ministry of the Economy. This system will provide them with approved clauses for their governing documents which they may choose among;
- The Ministry of the Economy will file the approved governing documents electronically with the Public Registry of Commerce;³

² Both notary publics and commercial brokers are *fedatarios públicos*, or private individuals with the power to conclusively carry out certain legal acts and bear witness to facts.

³ The law doesn't mention anything about the registration fees generally charged by the Public Registries.

- The shareholders of an SAS will be personally liable for criminal actions carried out by the company, thus opening the door to piercing the corporate veil if an SAS is used to carry out crimes;
- The administration of the SAS may be carried out by electronic means, if the shareholders agree to it;
- The SAS will be obligated to file annual reports electronically with the Ministry of the Economy which reveal the financial situation of the company. The failure to file these reports during two consecutive years will lead to the company's dissolution; and
- The SAS will not have to separate five percent of its annual net profit as a reserve fund, unlike other types of entities.

As with other types of entities, the SAS will be governed by its shareholder or shareholders through physical or electronic meetings.

Limitations on the SAS

The SAS will have a number of limitations designed to prevent its use by mid-size or large companies. To begin with, all shareholders must be natural persons who have an electronic signature issued by the tax authorities.⁴ Moreover, none of those natural persons may also be controlling shareholders of another type of company, effectively eliminating the use of the SAS as a subsidiary of an existing company. Third, the SAS may not have a total annual income greater than five million pesos, or

⁴ This electronic signature will be used to "sign" the company's governing documents.

approximately 280,000 USD (as of mid-March 2016). If it exceeds that figure, it must be transformed into a different kind of entity. Fourth, all shares of an SAS must have the same value and must confer the same rights on their holders, thus eliminating the possibility of creating different classes of shares. Finally, the SAS will be represented by an administrator, who must also be a shareholder, thus eliminating the possibility of creating an administration independent of the shareholders.

The result of all of these restrictions is to ensure that the SAS is only used as a vehicle to operate fairly small businesses, including start-ups. Even so, the amendments to the LGSM are noteworthy in that they represent a revolutionary break from the past in quite a few areas of Mexican corporate law orthodoxy. If these new ideas work out in practice, they may eventually spread to the more long-established entities in the Mexican corporate world.