

Doing Transaction in Mexico - Conducting Due Diligence

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Conducting due diligence is a key aspect of any transaction, international or otherwise. Attorneys working on transactions conducted in Mexico or that involve Mexican entities ought to be aware of registration and certification requirements that are unique to Mexico and that can affect the good standing and validity of Mexican contracts and companies.

First, unlike the United States, many types of documents are required to be notarized in Mexico. For example, the incorporation of every company, the buying and selling of all types of real estate, the establishment of deeds and wills, the creation of mortgages all require notarization. Corporate formalities such as amending governing documents, appointing and removing directors, or merger transactions also require certification before a notary public.

Many corporate documents of Mexican entities must also be recorded before the Mexican Public Registry of Property and Commerce (*Registro Público de la Propiedad y de Comercio*). There is both a federal registry and local registries in each Mexican state. Among the documents that need to be filed with these public registries are organizational documents, granting of powers of attorney, appointment of directors, and significant transactions. Failure to ensure that such documents are properly filed can lead to penalties and cause significant complications for a transaction.

Entities themselves must be registered with several governmental agencies in Mexico. One such agency is the National Registry of Foreign Investment (*Registro Nacional de Inversiones Extranjeras*), which documents all foreign investment in Mexico. Companies must also be registered and in good standing with the Federal Taxpayers'

Registry (*Registro Federal de Causantes*). All Mexican entities that maintain employees in Mexico must be registered as an employer before the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social*), the Mexican Institute for Workers' Housing (*Instituto del Fondo Nacional de la Vivienda para los Trabajadores*), and the Workers' Retirement Fund (*Sistema de Ahorro para el Retiro*).

In addition to being registered with the Federal Taxpayers' Registry, Mexican companies are also required to keep an After-Tax Earnings Account (*Cuenta de Utilidad Fiscal Neta*), a Capital Contributions Account (*Cuenta de Capital de Aportación*) and previously, a Reinvested After-Tax Earnings Account (*Cuenta de Utilidad Fiscal Neta Reinvertida*). Failure to follow any of these registration formalities can have adverse effects on the tax treatment of a transaction.

The above is by no means an exhaustive list of diligence issues that practitioners face when conducting transaction involving Mexican entities. However, these are all good examples of formalities that may be unfamiliar to non-Mexican attorneys but that should be noted in the diligence process. All practitioners working on transactions involving Mexican entities are advised to familiarize themselves with these and other corporate formalities specific to Mexico (or retain counsel who are) in order to identify and address these issues in the diligence process.