



**DOING
BUSINESS IN
MEXICO**

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Who is Ernesto Velarde Danache?



Ernesto Velarde-Danache, Mexican Notary Public and Attorney licensed only in Mexico, was admitted to practice in 1982. He holds an LLM from the University of Cambridge, of Cambridge, England.

He was the Mexican Representative to the International Year of Peace Conference held at the United Nations Office at Geneva, Switzerland and attended the Hague Academy of International Law in The Netherlands.

He has helped more than 300 companies start business in Mexico.

In 2011, Ernesto published his first novel “La Conjura. Con o Sin la CIA”.

Ernesto has spoken about Mexican and International Laws and Doing Business in Mexico in many different countries such as the United States, Canada, Italy, France, Portugal, England, Spain, India, Mexico, the Republic of Ireland, Cuba, Argentina, Switzerland, The Netherlands, Slovakia, The Czech Republic, Germany, China, Singapore, Colombia and Korea.

For more than 18 years he was the host of a live Mexican television show by the name of “Con Sentido Comun”, which aired live in Mexico and Texas.

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Incorporation of Mexican Company

When foreigners are considering doing business in Mexico by incorporating a Mexican Company with foreign investment it is recommended that the interested party contact legal counseling in order to assist with the incorporation process to avoid with unnecessary delays.

Before the incorporation procedure commences a Mexican corporation or partnership choice must be selected. Likewise, it is necessary for the company to decide what type of administration it will have, i.e a board of directors or sole administrator/a board of managers or a sole manager. Also the

address of the company must be selected and the city and state must be included in the Bylaws for registration purposes before local and state authorities.

Authority to be granted to representatives/staff of the Mexican company in order to represent the company in day to day operations.

NO MINIMUM CAPITAL IN ORDER TO INCORPORATE A MEXICAN COMPANY

However, in a Limited Liability company the minimum capital is customarily only \$3,000.00 and in a corporation minimum fixed capital is customarily \$50,000.00 pesos.

The Most Common Powers of Attorney

A) LAWSUITS AND COLLECTIONS: It can be used to represent the company in any legal action brought by the company or brought against it in Mexico.

B) ACTS OF ADMINISTRATION: It enables the holder to execute contracts such as lease, distributorships, trusts, sales, etc., on behalf of the company and relating to its corporate purpose. This power of attorney enables the representative to appear before different governmental agencies as well as to process the Tax Advanced Electronic Signature of the Mexican company.

C) TO REPRESENT THE EMPLOYER: It can be used to represent the company in any legal labor action brought by the company or brought against it in Mexico.

D) ACTS OF DOMAIN: This power of attorney entitles its holder to act as

owner of the assets of the company. Normally it is only granted in favor of the sole administrator or board of directors.

E) POWER OF ATTORNEY FOR CREDIT INSTRUMENTS: Authorization to open and close bank accounts and to sign against them.

F) SPECIAL POWERS OF ATTORNEY: It can be used to represent the company before any Municipal, State and Federal Agencies (i.e. the Ministry of Finance and Public Credit, the Ministry of Internal Affairs "Immigration", Ministry of Economy, Tax Treasury Office, etc.)

G) SUBSTITUTION OF THE POWERS OF ATTORNEY GRANTED: This power enables the holder to grant power of attorney (those powers which the holder has been granted) to another person or person.

Regular Steps to incorporate a Mexican Company

- Determine the Numbers of shareholders (corporation) or partners (limited liability Company). At least two shareholders or partners are needed, same that can be persons or entities or a combination thereof.
- Process and obtain a name (denomination) permit from the Ministry of Economy (Secretaria de Economia).
- Once the permit is secured and the By-Laws are approved by the company, they must be formalized before a Mexican Notary Public and

then recorded before the local Public Registry of Commerce.

- Register the Mexican company with the Ministry of Finance and Public Credit (Secretaria de Hacienda y Credito Publico) in order to obtain the Taxpayer Registry Code Number and the Electronic Advanced Signature. The representative of the Mexican company who will process the company's Advanced Electronic Signature will need to have a general power of attorney for acts of administration to act on behalf of the Mexican company.

Mexican Tax Matters

Depending on your Mexican company's operations it must be determined with the assistance of your Mexican CPA, if the company's taxes are to be paid in a monthly or quarterly basis, as well as supplying you with the necessary information for the filing of the income tax returns.

THE MOST COMMON STATE, FEDERAL AND LOCAL TAXES ARE AS FOLLOWS:

FEDERAL TAXES: Income Tax, Value Added Tax and Special Tax on Production and Services.

STATE TAX: Some states collect payroll taxes (which must be paid once every month, and the cost generated depends on the cost of the total payroll per month).

Additional Registrations that the Mexican Company must comply with

- The Mexican Institute of the Social Security (IMSS). In México workers must be registered before the National Institute of the Social Security (IMSS);
- Registration before National Registry of the Foreign Investment in case there are foreign shareholders or partners as the case may be. The company must register with said

Foreign Investment Registry and file its annual renewal once it has been registered.

- The Importers Registry authorization (in the case the Mexican company will carry out importations);
- Use of Land permit (if applicable);
- Sanitary License, if applicable;

Mexico

Real Estate

AGREEMENTS

It is necessary to demonstrate to the Mexican authorities that the Company is committed to a piece of real estate through a purchase and sale agreement or lease agreement.

Please take note that agreement must be executed in Spanish.

DUE DILIGENCE

The due diligence study is conducted in order to verify that clear and free title to the property is available and that no mortgages/liens or any adverse issues exist with respect to the

property or should that be the case, report the existence of a mortgage/lien or any other adverse situation that may represent an issue prior to the closing.

CONSTRUCTION AGREEMENT

The construction agreement is a legal document signed between the Mexican company and the contractor. This legal document allows the parties to define in specific terms the extent of their obligations to each other relative to the delivery of products or services and payment terms. When the contract is signed, it generally cannot be changed unless both parties agree.

Open Bank Account (s) in Mexico

Once you have secured the registration of the Mexican company before the Public Registry of Commerce and the Federal Taxpayer Registry Number (“RFC”) the representative of the Mexican company with a power of attorney for credit instruments and authorization to open and manage bank accounts will be able to appear before a Mexican banking institution of his/her choosing to open the corresponding bank account(s).

The following are the minimum documents needed and submitted to Mexican banking institution in order to be able to open bank accounts:

- Copy of the Charter Incorporation of the Mexican company

duly registered with the corresponding Public Registry of Commerce;

- Copy of the Federal Taxpayer Registry Number (“RFC”) of the Mexican company;

- Copy of the power of attorney for credit instruments/authorization to open and manage bank accounts of the representative of the Mexican company;

- Copy of the identification of the representative of the Mexican company. In the case the representative is a foreigner copy of the corresponding Mexican Immigration permit; and

- Copy of public utility receipts (water, electricity, telephone bills, etc.) of the Mexican company.

IMMEX

Permits

If your Mexican company will perform manufacturing and services (i.e. refurbishing of products) operations in Mexico and subsequently export the products then an **IMMEX (MAQUILADORA) LICENSE** is recommended.

In order to prepare the IMMEX (Maquila) application the Mexican Maquiladora must provide the legal representatives with a list of all the raw material and equipment, spare parts, tools and components as well as their custom tariff classifications (the custom tariff classifications should be obtained by the custom broker which is to be hired) initially required to carry out the assembly/packaging operation desired

which are going to be temporarily imported into Mexico and the value of such merchandise. Also an estimated number of employees and the name of the parent company (U.S. Company) are required as well.

The different modalities/categories when filing for an IMMEX LICENSE are as follows:

- I. **IMMEX Holding Company Program.**
- II. **IMMEX Industrial Program**
- III. **IMMEX Services Program**
- IV. **IMMEX Shelter Program**
- V. **IMMEX Outsourcing Program**

Mexico Labor Environment

I. Types of employees in Mexico:

- Confidential are those that deal with administrative and managerial tasks.
- Unionized are those performing industrial manual work.

II. Labor Agreements:

- Collective Labor Agreement to be executed with any one of the local unions. The agreement is executed when an employer is considering having more than 20 unionized employees. It is reviewed every two years.

- The Internal Shop Rules are defined as the set of provisions concerning the development of the work provided in a company or establishment.

- The Individual Labor Agreement is a document to be executed by a person referred to as the employee (confidential) that agrees to provide paid services to an individual or Mexican company referred to as the employer under the subordination of the latter who, in turn, is obliged to pay for these services certain remuneration.

Working

Visas

All foreigners who wish to conduct business activities Mexico must have a temporary business visa.

a) VISITOR / FMM (MULTIPLE IMMIGRATION FORM).- If the foreigner's stay in Mexico will be less than 180 days and is for business related matters. When the foreigner obtains the FMM and intends to leave Mexico he/she must cancel the FMM and request a new one when he/she intends to reenter Mexico, even if the foreigner leaves Mexico for only one day.

b) TEMPORARY RESIDENT.- Immigration category granted to foreigners that desire to remain in Mexico for stays greater than 6 months but not greater than 4 years.

c) PERMANENT RESIDENT.- Immigration category granted to foreigners that desire to remain in Mexico indefinitely