

Ernesto Velarde-Danache, Inc.

Mexican & International Lawyers

1650 Paredes Line Rd. Ste 101 ~ Brownsville, Texas 78521

Phone (956) 548-9098 ~ Fax (956) 548-1656

E-mail: evd@velardedanache.com

www.velardedanache.com

In order for you to have an overall scope of the minimum requirements needed in order to establish a Mexican Company, herein below is an outline of the steps that must be carried out in order to incorporate a Mexican Maquiladora company within Mexico.

I. INCORPORATION OF A MEXICAN COMPANY. THE LEGAL REPRESENTATIVES (ATTORNEYS) MUST PERFORM THE FOLLOWING STEPS IN ORDER TO INCORPORATE IN MEXICO:

- a). Obtain a denomination permit from the Ministry of Foreign Affairs (Secretaria de Relaciones Exteriores); in order to file for this permit, it is necessary for you to provide the legal representatives with three (3) options for the corporate name of the Company.
- b). Draft the By-Laws (Estatutos) of the Company. Be advised that Mexican corporations or partnerships, must be determined before incorporation proceedings commence. Thus, it is necessary to select between the standard corporate form (S.A. de C.V.) and a limited liability company (S. de R.L. de C.V.), we recommend the limited liability company; for that purpose the legal representatives need at least two shareholders or partners, same that can be persons or entities. 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. If the shareholders or partners are foreign persons or entities, they may not appear before the Mexican Notary Public unless they have the necessary immigration permits to do so. If the persons or entities lack the necessary permits, in order to incorporate the company, it is necessary to draft proxies in which their representatives are authorized to appear on their behalf; typically the corporate attorneys.
- c). Once 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.
- d). Preparation and issuance of stock certificates or social parts certificates as the case may be.
- e). Prepare the corporate ledgers of the company, to record the minutes of the S.A. de C.V. company, increase and reduction of capital minutes book, shareholders registry minutes book, shareholders meetings minutes book, sessions of the board of directors minutes book (In the event of board of directors) or of an S. de R.L. de C.V. Company, increase and reduction of capital minutes book, partners registry minutes book, partners meetings minutes book, sessions of the board of managers minutes book (In the event of a board of managers).

Once the above is accomplished, the company must be registered with the following state and federal agencies.

II. TAX MATTERS. Once the incorporation proceedings have been carried out and the newly formed entity must be recorded with the corresponding Federal Tax Authorities, in order to obtain the Federal Taxpayer Registry Number (“RFC”), and the state authorities. This is to be done in coordination with your Mexican CPA.

In addition to the above, the company must process the Advanced Electronic Signature for the Company before the Ministry of Finance and Public Credit.

Please be advised that in order to register the company before Mexican agencies, mainly the Ministry of Finance and Public Credit a physical address must be provided for that respect.

III. ENVIRONMENTAL ISSUES. It is necessary to obtain approval from the environmental authorities in the capital city of Tamaulipas, Cd. Victoria. The Mexican Maquiladora must submit an environmental preventive report which basically is a detailed report about the operation. The authorities will then verify that there is no hazardous impact to the environment (Environmental Preventive Report) as a result of such activities, likely an operating license together with other applications for the transportation, disposal and handling of materials or substances. The authority may grant their approval or request the Maquiladora to file a more detailed environment impact report. **This report is to be prepared by our environmental associates, while we will do the filing.**

IV. INTER-COMPANY AGREEMENTS. The Mexican Corporation must execute the inter-company agreements with its parent company, such as a Bailment Agreement or Commodatum Agreement for the machinery and equipment brought into Mexico and property of the parent company and the Maquiladora Agreement. A Maquiladora Agreement is to be drafted and executed between the U.S. or foreign parent company and the Mexican maquiladora. This Agreement will deal with the different rights and obligations of each one of the parties, i.e. who pays the Mexican and U.S. customs-broker, who pays for transportation, the maquiladora fee to be paid to the Mexican entity, times and places of delivery, quality control, obtaining of visas for the foreign personnel, technical assistance to be rendered to the Mexican entity, etc.

Although not required by law, we suggest that a Bailment (Commodatum) Agreement be executed between the parent and the Mexican subsidiary. This Agreement will provide protection to the equipment owned by the parent company that is shipped to be used in the Mexican operations. If this Agreement lists (attached as an exhibit to the Agreement) all those items that were imported into Mexico and it is subsequently recorded with the Public Registry of Commerce, no creditors of the Mexican company can have a valid action against said equipment or machinery.

V. REAL ESTATE. It is necessary to demonstrate to the Mexican authorities that the company is committed to a piece of real estate through a Purchase Agreement or a Lease Agreement which must be executed in Spanish. **Moreover, the land must have a land use permit to operate as a Maquiladora,** if not within an industrial park.

The Purchase and Sale Agreement for the premises to be used by the Maquiladora needs to be drafted and executed. If you are going to purchase land in Mexico, we recommend conducting a due diligence study to ensure that the property is in good standing. Afterwards, the corresponding agreements (Land Purchase and Sale, Construction and so on) will have to be

prepared, negotiated and executed; we may assist on these matters.

VI. LABOR MATTERS.

In most Mexican cities, a Collective Labor Agreement is to be executed with any one of the local unions. Mexican law distinguishes two different categories of workers. Confidential workers and unionized workers. The first ones of those deal with administrative and managerial tasks while the union workers are those performing manual work. This agreement is reviewable every two years and the payroll, by law, is revised (increased) every year.

A Collective Bargaining Agreement (when having more than 20 workers “obreros”) and/or an Individual Employment Agreement (for confidential employees), as the case may be, must be executed.

VII. WORKING VISAS

Working visas for all non-Mexican personnel. All foreigners who wish to conduct business activities within the Mexican territory must have a temporary business visa either an FMN or FMVC (for 180 days) or a working visa FM3 (for one year with a possibility to extend said visa for four years more). The temporary business visa can be obtained at one’s first point of entry into Mexico, whether by air, land or sea, such as the international airports of Guadalajara and Mexico City, for example. There is a small fee for the FMN or FMVC and such visas may be obtained simply by evidencing one’s nationality.

VIII. FEDERAL AND STATE TAXES.-

FEDERAL TAXES

With respect to Maquiladoras, Income Tax to be paid and same is based on the greater of either: a) 6.9% on the total value of the Maquiladora’s assets used in its operation or b) 6.5% of the total amount of its costs and expenses related to its operations, without the right to change from one to the other, or it may c) apply for and obtain a decision from the Ministry of Finance and Public Credit approving a transfer pricing study or an Advanced Price Agreement (APA), taking into consideration the assets used in the Maquiladora operation.

As stated above it is important to carefully review the alternatives since once chosen, the choice cannot be altered.

STATE TAXES

In the State of Tamaulipas, a state tax known as the 2% tax on the payroll which must be paid once every month must be paid. It is based on the cost of the total payroll per month.

EXPENSES OF THE MEXICAN INSTITUTE OF THE SOCIAL SECURITY (IMSS).

In Mexico, workers must be registered before the National Institute of Social Security (IMSS). Your Mexican CPA can process.

IX. OTHER RELATED MATTERS

- 1) Registration before the National Institute for the Workers Housing Fund.
Your Mexican CPA can process.
- 2) Importers Registration.
- 3) The System for the Workers Savings Fund on Retirement.
Your Mexican CPA can process.
- 4) 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 Annual renewals generally are filed by the company's internal or external CPA;**
- 5) Municipal Operating License permit;
- 6) Sanitary License;
- 7) Additional permits for the importation of the raw material, if according to the Mexican regulations are applicable.

Additional requirements with other agencies may apply depending on the type of activity to be performed.

Once all the above steps have been taken, an application is to be filed before the Mexican Ministry of Economy requesting the issuance of a Maquiladora license. Information on the corporate structure of the company, the intended operation, the process to be performed on the product, the jobs to be created, the value added to be generated in Mexico, as well as every single piece of equipment, machinery, raw materials, components, spare parts, etc. that are to be imported into Mexico must be listed.

X. MAQUILADORA – IMMEX APPLICATION. In order to prepare the 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) is required as well.

Special permits for the usage of some equipment and machinery may be required from the Department of Labor and in some instances by the Health Department as well, depending on the nature of the different pieces of equipment and machinery to be used in the operations.

Contracts may have to be executed with the local Water Commission, the Federal Power Commission, the Mexican telephone company (TELMEX), with PEMEX for the supply of natural gas (if needed), etc., etc.

The aforementioned is a brief description of the minimum legal requirements in order to incorporate a Maquiladora in Mexico; please be advised that according to the needs of the company, other specific permits may need to be obtained.