



STARTING A BUSINESS IN THE U.S.?

BY ERIKA AARUN

I feel very proud of being able to write for the American Society of Mexico Newsletter. I love the idea of addressing more than 2 million U.S. citizens living in Mexico, and so many nonprofit associations, U.S. investment operations in Mexico, and Mexicans seeking to invest or who are already investing and living in the U.S.

I first want to discuss Mexicans who invest or are looking to invest in the United States. I will focus on investments in the State of Texas in light of the contract recently signed by AmSoc and the Texas Association of Business, and because once again, Texas has been recognized as the best state for doing business.

My name is Erika Aarún. I am a licensed lawyer in México, and more recently, in the United States. For over 15 years I have served as General Counsel in regulated and publicly traded multinational corporations in fields such as railroad transportation, logistics, mining, cement and concrete, and real estate. In 2019, I moved to Texas (also as an investor) and currently collaborate with a firm in Dallas that handles corporate, transactional, and business matters, mergers and acquisitions, and corporate compliance.

I will start by dispelling a few mistaken beliefs about investing in the United States.

First, it's not as complicated, as it can be in Mexico, to incorporate a business in the United States, particularly in Texas. Every state has its own specifics in the matter, but in general it is really not difficult for a Mexican to incorporate a company in the U.S.

Individuals are not required U.S. citizenship to do so, although anybody interested in investing needs to comply with immigration rules if he or she is to work legally in the country. However, incorporating a business and investing in it does not require U.S. citizenship, so Mexicans can very well do so.

Very briefly, businesspeople need to choose the kind of entity they want to incorporate in Texas. It will usually be a Limited Liability Company (LLC), a corporation, or partnership; each of these have their own legal and fiscal implications, so the most appropriate kind of entity will be determined by the purpose or objectives of the business.

Legal requirements are basically the capacity to enter into contracts, which means being of legal age with the capacity to engage in contracts and be bound by the incorporation of a business.

After deciding how they want to incorporate their business, entrepreneurs will choose a name that is not being used by another company. Basically a business can be incorporated online by registering a certificate of incorporation before the Secretary of State. The certificate will state a registered agent, who will be responsible for receiving all legal and official documents for the company, preparing the bylaws (for corporations) or an operational agreement (for LLCs) that outlines internal governance and

management of the company. Depending on the type of business, the business owner will obtain certifications, licenses, and federal, state or local permits, and fulfill fiscal and government obligations.

Texas and Mexico enjoy particularly strong trade bonds and economic benefits due to their proximity, enterprises, imports/exports; all of which exert an important influence in their respective national economies. This is why entrepreneurs looking to establish a contractual relationship with a U.S. client or supplier not only can, but should, seek the best terms via services or purchase agreements. There are no legal restrictions to negotiating a contract and discussing commercial terms amenable to both parties, which is actually a very common practice that does not pose any cultural obstacles or negative perceptions either.

It is also important for Mexican businesspeople to know that any breach of contract can result in grave negative consequences for their businesses. Therefore, a healthy approach is to require contract fulfillment, at the appropriate time, and resort to applicable legal instruments that can help solve an issue like default in payments, before embarking on long, expensive, and wearisome litigation. Parties can enter into commitment agreements that can be convenient for both, if their intention is to overcome a difficult financial situation by having the debtor commit to pay within a given term, while the creditor accepts the term for remedy with certain securities. These may include a banking account security interest, or recognition of debt that can serve as proven evidence in trial. There are always legal means to agree on remedies for noncompliance and overcome differences in a business environment and are common approaches to solving legal issues before going to trial.

Erika Aarún is a member of the AmSoc Editorial Committee. After a successful legal career in Mexico, she relocated with her family to the United States, where she prepared for and was accepted by the Missouri Bar. She is currently collaborating with the Gabriela N. Smith legal firm.



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