CORPORATE GOVERNANCE

Mexico

LEXOLOGY
Getting The Deal Through

Consulting editor
Sidley Austin LLP

Corporate Governance

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into corporate governance issues worldwide, including sources of rules and practice; responsible agencies and notable opinion formers; shareholder powers, decisions, meetings, voting, duties and liabilities; employee role in governance; corporate control issues; board structure and composition, duties, leadership, committees, meetings and evaluation; director and senior management remuneration; director protections; disclosure and transparency; hot topics, such as shareholder engagement, and sustainability, pay ratio and gender gap reporting; and other recent trends.

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SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

All mercantile entities are regulated by the General Law of Business Organisations, which establishes the different types of commercial entities that can be formed in Mexico, as well as the general provisions to be included in their by-laws, including governance matters. Although said law regulates several forms of business organisations, in practice, some have become obsolete, whereas the most common forms are stock corporations and limited liability companies.

The Securities Market Law sets forth the legal framework and rules applicable to investment promotion stock corporations and listed companies in the form of publicly traded corporations, including regulation with respect to the formation and responsibilities of the boards and committees, minority rights and voting agreements, among others.

Publicly traded corporations, which are those with shares registered before the National Securities Registry and listed on an authorised stock exchange, are primarily regulated by the Securities Market Law as mentioned above, the Mexican General Regulations Applicable to Securities Issuers, the Mexican General Regulations Applicable to Entities and Issuers Supervised by the National Banking and Securities Commission that hire auditing services with respect to financial statements and the General Law of Business Organisations, with respect to corporate governance, transparency and disclosure and other maintenance requirements for publicly traded corporations.

There are specific corporate governance provisions applicable to certain regulated entities, such as banks, financial corporations, insurance companies and other financial institutions, which are set forth in the relevant laws and regulations governing those entities.

The Best Corporate Practices Code provides a compilation of the best corporate governance practices for Mexican companies, prepared under the corporate governance framework of the Organization for Economic Cooperation and Development; the provisions set forth therein are voluntary for non-listed companies and publicly traded corporations are required to inform the corresponding stock exchange and the public of the extent or degree to which their corporate governance practices adheres to such code.

Finally, the by-laws may contain additional governance practices to the extent that they do not contravene the laws.

Law stated - 30 April 2022

Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder or business groups, or proxy advisory firms, whose views are often considered?

There is no governmental agency responsible for enforcing corporate governance rules for non-listed companies; however, compliance with this regulatory framework is monitored by shareholders, the board of directors, statutory or external auditors, and third parties such as lenders. In the event of conflicts or disputes, the enforcing authority would be the competent judicial court (whether federal or local). The entity responsible for amending the General Law of Business Organisations or the Securities Market Law is the federal legislative power known as the Congress of the Union, composed of the Chamber of Deputies and the Senate.

Regarding publicly traded corporations, the National Banking and Securities Commission is the entity in charge of

surveillance and shall issue and amend any secondary regulations. Other regulated entities may be subject to the supervision of the relevant agency and the Ministry of Finance.

In Mexico there are no shareholder groups or specific proxy advisory firms whose views are often considered. Shareholders follow the advice of their boards of directors and legal advisors.

Law stated - 30 April 2022

THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND EMPLOYEES

Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

The shareholders' meeting appoints and removes the members of the board of directors. Unless otherwise provided in the by-laws of a company, the shareholders may appoint and remove them by a majority vote. The General Law of Business Organisations sets forth that if there are three or more members of the board of directors, the by-laws shall provide the rights corresponding to the minority shareholders to appoint members of the board, but in any case, minority shareholders representing 25 per cent of the capital stock shall have the right to appoint at least one member. For investment promotion stock corporations and publicly traded corporations, the shareholders representing 10 per cent of the capital stock shall have the right to appoint at least one member, and the removal of such member by the remaining shareholders (ie, the non-appointing shareholders) may only take place if the shareholders intend to remove all of the members of the board of directors.

The General Law of Business Organisations also establishes that the shareholders' meeting shall appoint, remove or ratify the members of the board of directors or sole directors, at least on a yearly basis; in practice, however, such a change is made whenever the business needs it.

Law stated - 30 April 2022

Shareholder decisions

What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

Pursuant to the General Law of Business Organisations, the shareholders' meeting is the supreme body of any commercial entity. Therefore, such body has full power and authority to approve any matter concerning the company's affairs. Whereas some matters may be resolved by either the shareholders' meeting or the management body, among others, the following decisions are reserved to the shareholders:

- approval of financial statements and the annual report prepared by the management body;
- appointment and removal of the board of directors and the statutory auditor(s);
- early dissolution;
- increase or decrease of the capital stock;
- change of the corporate purpose or nationality;
- transformation or merger;
- issuance of preferred shares;
- amendments to the by-laws; and
- any other decision reserved to the shareholders pursuant to the by-laws of the company.

Matters involving the organisational structure of the company and matters for which the law requires a special quorum are reserved to extraordinary shareholders' meetings.

Under Mexican law, there are no specific matters that shall be submitted to a non-binding shareholder vote; however, the by-laws of any company may include provisions regarding voting restrictions applicable to certain types of shares.

Law stated - 30 April 2022

Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

Generally, at meetings, shareholders shall be entitled to one vote per each share they hold; however, the by-laws may provide for classes or series of shares that may grant different rights (ie, limited voting, non-voting, preferred shares). Furthermore, pursuant to the General Law of Business Organisations, companies may include in their by-laws provisions regarding the issuance of shares that:

- do not confer or confer limited voting rights;
- grant non-economic rights other than the right to vote or exclusively the right to vote; or
- grant veto rights or require the favourable vote of one or more shareholders.

Whereas some restrictions for excluding shareholders from profit sharing apply for stock corporations and limited liability companies, there is no such restriction for investment promotion stock corporations.

As a general rule, publicly traded corporations may only issue ordinary shares where the rights of their respective holders are not limited or restricted; however, they may issue different series of shares with the authorisation of the National Banking and Securities Commission, provided that non-voting shares, restricted voting shares and limited voting shares may not exceed 25 per cent of the shares held by the general public (or float).

Law stated - 30 April 2022

Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?

Meetings must be held at the company's corporate domicile to be valid, except in the case of acts of God or force majeure . In Mexico, corporate domiciles are set forth by each company in its by-laws and often it is expressed as a city and not a particular address (ie, Mexico City). Prior notice must be sent to all shareholders of the agenda, time and date of the meeting. Notice must be given at least 15 days before the meeting for stock corporations and eight days for limited liability companies unless otherwise stated in the by-laws. However, the shareholders' meeting shall be deemed legally installed and prior notice is not required if 100 per cent of the company's share capital is represented at the meeting, although publicly traded corporations must always give at least a 15-day notice using the electronic system for publications.

Nevertheless, the General Law of Business Organisations sets forth that the by-laws may provide unanimous

resolutions in lieu of a shareholders' meeting, which shall have the same validity as a shareholders' meeting, to the extent that they are confirmed in writing.

Shareholders may be represented at the meetings by a proxy, who may be or may not be part of the company, but in any case, a proxy cannot be a member of the board of directors or a statutory auditor.

In connection with virtual meetings, regarding commercial entities, since 2022 legislators are discussing the amendment of certain relevant laws to recognise shareholders' and partners' meetings held via videoconference as valid, allowing shareholders and partners to hold meetings by electronic means. In the event that such a proposal is approved, the commercial entities must regulate in greater detail in their bylaws the processes and specific rules on how to conduct such meetings.

Law stated - 30 April 2022

Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

The authority to call a shareholders' meeting lies with the board of directors or sole director, as applicable, or to the statutory auditors. In stock corporations, shareholders representing at least 33 per cent of the company's share capital can, at any time, request the sole director, board of directors or the statutory auditors to call a shareholders' meeting to discuss matters stated in the request. If the meeting is not called within 15 days of receipt of the request, the meeting can be called by a court resolution at the shareholder's request.

In investment promotion stock corporations and publicly traded corporations, shareholders owning at least 10 per cent of the voting shares (including limited or restricted voting rights) can, at any time, request the president of the board of directors, the statutory auditor, the company's external auditors or a board committee to call a meeting to discuss relevant issues.

Law stated - 30 April 2022

Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

Under Mexican law, there are no specific provisions regarding special duties, such as fiduciary duty, owed by the controlling shareholders in favour of the company or the non-controlling shareholders. However, shareholders shall abstain from voting in such matters where the corresponding shareholder has a conflict of interest. A shareholder failing to comply with such provision can be subject to damages and losses that affect the company.

Furthermore, shareholders representing 25 per cent of the capital stock of stock corporations or 20 per cent of the capital stock of investment promotion stock corporations may oppose the resolutions approved by the shareholders' meeting through a judicial procedure, provided they have voting rights with respect to the matters approved in such disputed resolutions.

Law stated - 30 April 2022

Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

Shareholders are only liable for the amount of their capital contributions. If a company is not duly registered with the Public Registry of Commerce, shareholders or partners may be held jointly liable for certain acts and omissions of the company in violation of tax and criminal laws.

Furthermore, partners or shareholders shall be jointly liable with respect to tax claims in the part that cannot be covered by the assets of the company, without exceeding the amount of their capital contributions, among others, in the event that the company does not comply with certain tax obligations.

The tax liability will only be applicable to the partners or shareholders who have or had effective control of the company, with respect to the tax claims when they had such capacity as partners or shareholders. Effective control is defined in the Federal Tax Code as the authority to:

- impose decisions in shareholders' meetings, or appoint or remove the majority of the board of directors or equivalents;
- have the right to exercise the vote with respect to more than 50 per cent of the capital stock of the company; and
- direct the administration, strategy or main policies of the company, whether through the ownership of shares, by contract or otherwise.

Law stated - 30 April 2022

Employees

What role do employees have in corporate governance?

Under the General Law of Business Organisations or the Securities Market Law, there are no specific provisions regarding the role or obligations of employees in connection with corporate governance. Moreover, there are no requirements under Mexican law for employee or union representation on boards of directors or committees. Nevertheless, on a case-by-case basis, companies may adopt policies or guidelines imposing specific obligations for its employees with respect to corporate governance activities.

Law stated - 30 April 2022

CORPORATE CONTROL

Anti-takeover devices

Are anti-takeover devices permitted?

There are no specific provisions that prohibit anti-takeover devices. Regarding publicly traded corporations, their by-laws may contain anti-takeover provisions (the poison pill being the most common mechanism) to the extent that such provisions:

- are approved by an extraordinary shareholders' meeting where no more than 5 per cent of the shares vote against such provisions;
- do not exclude one or more shareholders different from the person that intends to obtain control, from the economic benefits that derive from such provisions;
- do not restrict in its entirety the control of the company; and

- do not contravene the relevant mandatory tender offer provisions of the Securities Market Law or nullify the exercise of economic rights by the corresponding acquiror.

Law stated - 30 April 2022

Issuance of new shares

May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

Pursuant to the General Law of Business Organisations, any issuance of new shares shall be approved by the shareholders' meeting. Regarding the pre-emptive rights to acquire shares, the General Law of Business Organisations sets forth that shareholders shall have a pre-emptive right to subscribe the newly issued shares in the event of an increase in the capital stock of the company, in proportion to the number of their shares. With respect to investment promotion stock corporations, the by-laws may contain provisions that amplify, restrict or deny the pre-emptive rights set forth in the General Law of Business Organisations. Regarding publicly traded corporations, the above-mentioned pre-emptive right will not apply to capital increases by means of a public offering.

Law stated - 30 April 2022

Restrictions on the transfer of fully paid shares

Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

Yes, companies are allowed to include in their by-laws restrictions for the sale or transfer of shares, such as requiring the prior approval of a shareholders' meeting or the board of directors. Additionally, by-laws may include further share transfer rules, such as tag-along, drag-along, put and call options and other similar rights and obligations.

Furthermore, limited liability companies require the approval of the partners' meeting for the transfer of equity quotas to a person alien to the company.

Law stated - 30 April 2022

Compulsory repurchase rules

Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

Put and call options are valid; however, under Mexican law, there are no provisions regarding compulsory share repurchase. Investment promotion stock corporations and publicly traded corporations may repurchase their shares in compliance with the provisions set forth in the Securities Market Law; notwithstanding the foregoing, by-laws may include specific cases in which to require the repurchase of shares as long as the provisions set forth in said law are complied with.

Law stated - 30 April 2022

Dissenters' rights

Do shareholders have appraisal rights?

The General Law of Business Organisations provides that the by-laws of a company shall include the scenarios for shareholders to exercise their retirement right and provisions regarding the mechanisms to be followed in case of a deadlock where the shareholders fail to reach an agreement with respect to certain specific matters, inter alia.

Also, the General Law of Business Organisations sets forth that any opposing shareholder with respect to resolutions adopted by a shareholders' meeting in connection with a change of corporate purpose, change of nationality, the transformation of the company, or spin-off, shall have the right to sell their stock and obtain reimbursement for their shares, in proportion to the company's assets.

In limited liability companies, partners have the right to retire from the company when a person alien to the company is appointed as a member of the board or sole manager, to the extent that the retiring partner has voted against such appointment.

With respect to publicly traded corporations, shareholders that own stock of the variable portion of the capital stock do not have the right to separate from the company as provided for stock corporations by the General Law of Business Organisations.

Law stated - 30 April 2022

RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

Board structure

Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

Under Mexican law, the board of directors of a publicly traded corporation is assisted by one or more special committees responsible for audit and corporate practice matters, which are entitled to carry out various activities regarding, among others, the supervision of corporate governance and the assistance provided to the board of directors in connection with corporate matters and surveillance.

The Best Corporate Practices Code issued by the Mexican Business Coordinating Council recommends that companies set up committees for audit, evaluation and compensation, finance and strategic planning, and risk assessment and compliance. It also recommends that these committees are formed mostly of independent directors, with a minimum of three and a maximum of seven directors.

Law stated - 30 April 2022

Board's legal responsibilities

What are the board's primary legal responsibilities?

The board of directors oversees all matters concerning the management of the company. In accordance with the General Law of Business Organisations, directors shall have the responsibilities inherent to their mandate and those arising from their obligations pursuant to law and the by-laws. The shareholders may limit the board of directors' authority in the by-laws, and such restrictions are enforceable against third parties.

In publicly traded corporations, the board of directors is expressly released from handling day-to-day activities. The general director or chief executive officer is in charge of:

- day-to-day activities;

- the existence of accounting, internal audit and control systems;
- surveying compliance; and
- disclosure of material information.

Furthermore, the board of directors will carry out its activities with the assistance and support of the corporate practices committee, the audit committee and other special-purpose committees created to focus on specific tasks (such as compensation and risk management), and the external auditor.

Law stated - 30 April 2022

Board obligees

Whom does the board represent and to whom do directors owe legal duties?

The board of directors represents and manages the company and owes legal duties to it.

The directors are jointly and severally liable with the company with respect to, among others:

- maintaining the capital contributions made by the shareholders;
- any non-compliance with the General Law of Business Organisations and the by-laws relating to declaring and paying dividends (including liability for dividends paid exceeding those legally available);
- the existence and maintenance of the company's accounts and other books and records; and
- due compliance with shareholder resolutions.

Law stated - 30 April 2022

Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed? Is there a business judgment rule?

The Securities Market Law sets forth a civil liability legal action against directors and relevant officers of publicly traded corporations, which can be exercised either by the company or its shareholders who own at least 5 per cent of the capital stock. The Securities Market Law further establishes that, under certain circumstances and when acting in good faith, directors will be excluded from such liability. In stock corporations, shareholders representing 25 per cent of the capital stock may initiate a civil liability legal action against directors, when:

- the claim includes the total amount of liabilities incurred by the directors in favour of the company, and not only the amount corresponding to the plaintiffs' personal interest; and
- the plaintiffs voted against the shareholders meeting's resolution whereby it was agreed to release directors from their liabilities.

In investment promotion stock corporations, such action may be enforced by shareholders representing at least 15 per cent of the capital stock.

Law stated - 30 April 2022

Care and prudence

Do the duties of directors include a care or prudence element?

Generally, members have a fiduciary duty towards the shareholders and the company. They have the responsibilities and duties that are inherent to their position towards the company, shareholders and third parties (which includes, in a broader sense, care and prudence elements). In terms of applicable laws and the corresponding by-laws of the company, board members shall protect and look out for the company's interests and refrain from participating in decisions in which they have a conflict of interest.

The Securities Market Law sets forth the following fiduciary duties upon members of the board of directors and committees, the general director or chief executive officer and relevant officers of publicly traded corporations: duty of care and duty of loyalty. Furthermore, they shall abstain from participating and being present in the discussion and voting of any item where they have a conflict of interest.

Law stated - 30 April 2022

Board member duties

To what extent do the duties of individual members of the board differ?

There are certain positions within the board of directors that may have additional duties or responsibilities. For example, the General Law of Business Organisations provides that the chair of the board of directors, unless otherwise provided in the by-laws, has a tie-breaking vote in resolutions adopted by the board of directors and shall be in charge of the formalisation and execution of the resolutions adopted by the board of directors.

The by-laws of companies may set forth certain skills, experience or any other characteristics that the board members or certain officers shall comply with to be able to be appointed in such a position.

Law stated - 30 April 2022

Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

Under the General Law of Business Organisations, the director and member of the board positions are personal and shall not be performed through representatives. However, the board of directors can appoint a board member as a special delegate to carry out specific tasks. Nevertheless, the foregoing does not limit the board's legal and statutory liability. Furthermore, the board or sole director may confer powers of attorney to other persons to be exercised on behalf of the company for the performance of diverse responsibilities (within the scope of the board's respective authority), which may be revoked at any time.

Also, the company can grant powers of attorney to directors to act individually, as an attorney-in-fact and not as a director. Powers of attorney granted to a director can be limited.

The board of directors of publicly traded corporations is assisted by one or more special committees responsible for audit and corporate practice matters.

Law stated - 30 April 2022

Non-executive and independent directors

Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

Stock corporations and limited liability companies are not required to appoint independent directors but can do so in their by-laws. Under the Securities Market Law, at least 25 per cent of the board members of a publicly traded corporation must be independent.

An independent director is a person who has no considerable influence in the company, nor any power of command, and is not part of the management team of the listed company. Therefore, the independent director is impartial towards the company, not having any conflict of interest or personal interest and is appointed as an independent expert based on his or her expertise, capacity and professional reputation.

The Best Corporate Practices Code and the Securities Market Law provide a list of persons who are not considered independent directors.

For publicly traded corporations and investment promotion stock corporations, the Securities Market Law also provides that a shareholder who is part of a controlling group of shareholders is not an independent director.

Law stated - 30 April 2022

Board size and composition

How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

In the case of stock corporations and limited liability companies, management may be entrusted to a sole director or manager or to a board of directors or managers. The board shall be composed of at least two members. If the board has three or more members, the by-laws shall determine the rights that minority shareholders shall have for the appointment of such members, but, in any case, the minority representing at least 25 per cent of the capital stock shall appoint at least one member. For publicly traded corporations, this percentage shall be 10 per cent; for investment promotion stock corporations, shareholders that jointly or individually hold 10 per cent of the shares with voting rights (even if limited or restricted) may appoint or remove a member of the board.

Only the shareholders' meeting is entitled to make appointments to fill vacancies on the board, and, exceptionally, in the event of vacancies resulting in the lack of a quorum for adopting resolutions, the statutory auditor of the company may appoint provisional members. There are no specific provisions or differences in connection with newly created directorships.

Pursuant to the Securities Market Law, the board of directors of publicly traded corporations shall be integrated by a maximum of 21 members, of which 25 per cent must be independent. As provided in the Securities Market Law, the board of directors may appoint provisional members in exceptional vacancy cases, whenever a member is not replaced by the shareholders within a 30-day period or if such a vacancy results in the lack of a quorum for adopting resolutions.

Law stated - 30 April 2022

Board leadership

Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chair and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

There is no law or regulation in this regard. However, separating the function of board chair and chief executive officer is generally recognised as best practice. The rationale behind this practice is that the chief executive officer is supposed to be supervised by the board.

Law stated - 30 April 2022

Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

The General Law of Business Organisations does not provide a requirement for mandatory board committees; however, companies may create board committees as permitted by their by-laws.

The Securities Market Law establishes that the board of directors of publicly traded corporations may be assisted by one or more committees created for that purpose. The committee or committees that carry out activities in connection with corporate practices and auditing shall be exclusively integrated by independent directors and by a minimum of three members appointed by the board of directors. In the event that the company is controlled by a person or group of persons that hold 50 per cent or more of the capital stock, the corporate practices committee shall be formed by, at least, a majority of independent directors.

Law stated - 30 April 2022

Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

There is no minimum number of board meetings required by law. However, in accordance with the General Law of Business Organisations and the Securities Market Law, the shareholders must hold at least one annual shareholders' meeting, within the first four months of each year, approving, among other matters, the report submitted by the board or management body of the company, with respect to the company's performance in a calendar year, as well as the policies adopted by directors and, as applicable, the main existing projects of the company. Thus, although there is no specific requirement for a formal board meeting, it is customary that the board gathers at least once a year to discuss and prepare the foregoing report to be submitted for the shareholders' approval in their annual meeting.

Law stated - 30 April 2022

Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

No disclosure of board practices is required. However, regarding publicly traded corporations, because they are obliged

to disclose certain documents and resolutions that contain the appointment, structure, functions and duties of the board (ie, an annual report and shareholders' resolutions), such information is thereby disclosed. Additionally, there are some specific resolutions that publicly traded corporations are required to disclose in certain circumstances (ie, authorisation for launching a tender offer).

Law stated - 30 April 2022

Board and director evaluations

Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

In stock corporations, the shareholders can appoint one or more statutory auditors to oversee the performance of the board of directors and must file a report to the shareholders' meeting, including their opinion regarding management's performance.

Statutory auditors must be appointed in stock corporations, but this is not mandatory for limited liability companies. In publicly traded corporations, this role is performed through the audit and corporate practices committees and the external auditors. Investment promotion stock corporations can be managed as a stock corporation or a publicly traded corporation.

In most entities, board evaluation is an annual exercise by choice. The evaluation methodology and the process have some degree of flexibility. The process is usually tailored to the needs of the entity, the specific situation it is in, the corporate structure, the board culture and the internal set processes. However, there is no common format applicable to all entities.

Unless otherwise prescribed by internal regulations, annual evaluation is the most commonly followed cycle for board evaluation. Most commercial entities make the evaluation cycle consistent with the annual shareholders' or partners' meeting in which the financial report prepared by the board and, if applicable, the statutory auditor's report on management's performance are approved. As a result of such approval, and evaluation, the shareholders' or partners' could modify the board's composition or ratify its members and, as required, take action against members for failure to comply with their mandate as set forth above.

Although the laws do not expressly require it, the best practice would be to carry out a periodic performance evaluation of the board and its members' fiduciary duties.

Law stated - 30 April 2022

REMUNERATION

Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?

Other than the obligation for the shareholders' meeting to review or determine the remuneration for the members of the board of directors annually, there are no specific rules or provisions. Publicly traded corporations must disclose in their annual reports the total benefits (including a description of their nature) and remuneration paid to board members and high-level officers and related persons, although disclosure is usually made on an aggregate basis.

The Best Corporate Practices Code recommends internal policies to define the directors' responsibilities, key performance indicators, selection process and remuneration. It is also recommended to disclose the remuneration policy in the annual report.

Law stated - 30 April 2022

Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?

There is no law or regulation governing the remuneration of senior management of stock corporations and limited liability companies.

Pursuant to the Securities Market Law, the board of directors of publicly traded corporations shall approve, among others, the appointment and remuneration policies with respect to high-level managers, as well as the policies for granting loans, credits or guarantees in favour of such managers; however, there is no regulation or guideline regarding how such policies shall be determined.

Law stated - 30 April 2022

Say-on-pay

Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?

Although it is not common that shareholders have an advisory or other vote regarding executive remuneration, the shareholders' meeting is the supreme body of a commercial company; thus, it is entitled to vote on those matters. Normally, executive remuneration is part of the business plans prepared and approved by the board of directors; those plans may be filed before the shareholders' meeting for approval.

Law stated - 30 April 2022

DIRECTOR PROTECTIONS

D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

Directors' and officers' liability insurance is permitted. Some companies take out directors' and officers' insurance to cover actions and liability incurred by directors and officers against the company. It is common practice for publicly traded corporations to take out this type of insurance as permitted by the Securities Market Law, provided that the damages caused by their actions to the company do not derive from fraud, wilful misconduct, bad faith or unlawful acts under Mexican law.

Law stated - 30 April 2022

Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

Publicly traded corporations may agree on indemnities and directors' and officers' insurance, bonds or sureties covering the amount of the indemnity for damages caused by directors' and officers' actions to the company, except in the case of fraud, wilful misconduct, bad faith or unlawful acts under the Securities Market Law or other laws and regulations.

Law stated - 30 April 2022

Advancement of expenses to directors and officers

To what extent may companies advance expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness?

There are no requirements in this regard. However, the shareholders may agree to include the related provisions in the by-laws of the company.

Law stated - 30 April 2022

Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

A director's liability can be limited to a specific amount of incurred damages if provided by the company's by-laws or approved by the shareholders' meeting. The shareholders' meeting can pardon or indemnify a director against liability due to malpractice and not exercising due diligence if the director acted in good faith and the incurred damages have been covered or recovered by the director. The company or its shareholders cannot indemnify a director against liability for any action taken in connection with fraud, wilful misconduct, bad faith or unlawful acts under the Securities Market Law or other laws and regulations.

Law stated - 30 April 2022

DISCLOSURE AND TRANSPARENCY

Corporate charter and by-laws

Are the corporate charter and by-laws of companies publicly available? If so, where?

Once incorporated, companies shall file and register their articles of incorporation and by-laws before the Public Registry of Commerce corresponding to their corporate domicile. In practice, such registry only discloses excerpts of the main clauses of the by-laws of the companies to the public upon request.

Publicly traded corporations' articles of incorporation and by-laws are available in the electronic public registry of the stock exchanges and on their websites.

Law stated - 30 April 2022

Company information

What information must companies publicly disclose? How often must disclosure be made?

Pursuant to the Code of Commerce, it is mandatory for companies to file and register their articles of incorporation and by-laws before the Public Registry of Commerce. Additionally, stock corporations and limited liability companies must disclose the registry of shareholders or partners, respectively, and the transfer of shares or equity quotas that are recorded in the company's shareholders' or partners' registry book. In such publications, the Ministry of Economy must keep the shareholder's name, nationality and domicile confidential, except for those cases in which the judiciary or administrative authorities request the disclosure of the information.

Public companies are required to furnish periodically certain information to the National Banking and Securities Commission and to the stock exchange, including an annual report, quarterly and annual financial reports, press releases and other corporate governance and compliance matters.

Law stated - 30 April 2022

HOT TOPICS

Shareholder-nominated directors

Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

Shareholders may nominate directors in accordance with the process or requirements set forth in the by-laws. Under Mexican law, there are no specific proxy access provisions.

Law stated - 30 April 2022

Shareholder engagement

Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

Generally, engagement occurs during shareholders' meetings. The relationship between the company and its shareholders is carried out through the board of directors, the chair of the board and the secretary of the board and is usually during the annual meeting season.

Law stated - 30 April 2022

Sustainability disclosure

Are companies required to provide disclosure with respect to corporate social responsibility matters?

There are no obligations in connection with the disclosure of corporate social responsibility (CSR) matters set forth in the Mexican law. Therefore, CSR is not mandatory, but it is common for companies to launch CSR projects and engage outside interests voluntarily.

Under specific requirements arising from environmental laws, companies are required to report, among other items, their issuance of contaminating pollutant emissions and greenhouse gas emissions to record and implement the

corresponding measures to mitigate the adverse effects of such emissions. Additionally, the Mexican stock exchanges have implemented sustainability evaluations whereby companies must produce and submit sustainability reports to be rated in sustainability indexes and reports.

Law stated - 30 April 2022

CEO pay ratio disclosure

Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

There are no mandatory requirements.

Law stated - 30 April 2022

Gender pay gap disclosure

Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

There are no mandatory requirements.

Law stated - 30 April 2022

UPDATE AND TRENDS

Recent developments

Identify any new developments in corporate governance over the past year. Identify any significant trends in the issues that have been the focus of shareholder interest or activism over the past year.

Taking international and European trends as an example, financial agents and institutional investors are paying more attention to entities that focus their growth strategies and actions around sustainable practices. To standardise the way in which organisations manage environmental, social and corporate governance (ESG) issues, Latin American countries have followed the European Union's lead and have begun to issue ESG regulations applicable to entities. Although Mexico does not yet have ESG regulation at the national level, several states in the country have approved tax requirements that are subject to ESG issues. In this sense, entities that make excessive use of water or generate large polluting emissions will have to pay 'green taxes' at a local level.

While entities that are subsidiaries of large multinational corporations already take ESG issues into account to comply with regulations established in their parent countries, this trend has led Mexican entities to focus on these issues since customers, suppliers, creditors, investors and shareholders demand increasingly detailed, measurable and verifiable information about organisational performance to make entities report ESG policies, making companies within each industry 100 per cent comparable.

Law stated - 30 April 2022

Jurisdictions

Australia	Kalus Kenny Intelex
Brazil	Loeser e Hadad Advogados
China	BUREN NV
France	Aramis Law Firm
Germany	POELLATH
India	Chadha & Co
Japan	Anderson Mōri & Tomotsune
Kenya	Robson Harris Advocates LLP
Malta	GVZH Advocates
Mexico	Chevez Ruiz Zamarripa
Netherlands	BUREN NV
Nigeria	Streamsowers & Köhn
South Korea	Lee & Ko
Switzerland	BianchiSchwald LLC
Thailand	Chandler MHM Limited
Turkey	Gün + Partners
USA	Sidley Austin LLP