

Simplified Stock Companies: the new promise for businesses in Mexico

New Mexican companies may be incorporated by a sole shareholder, in one day and through the internet.

On March 14th, 2016, the amendment that incorporates the Simplified Stock Companies ("SAS", for its acronym in Spanish) as a new type of corporation to our commercial legislation, was published in the Federal Official Gazette, which amendment will become effective six months after its publication. Among other particularities, this amendment allows the incorporation of companies with annual revenue below 5 million pesos through the electronic system of the Ministry of Economy ("Ministry") and promises to be an answer to needs of the micro and small businesses in our country.

The reform initiative for the incorporation of the SAS was submitted in the Chamber of Senators in December 2014 and approved by the Chamber of Deputies on February 2016, in need of a figure that would allow an expeditious incorporation of micro and small businesses, as well as attending to the principles established by the United Nations Commission on International Trade Law on the systems of registration of companies.

According to the text published of the amendment to the to the General Business Corporations Act ("GBCA"), the particularities of the SAS are the following:

- 1) Its incorporation will be made digitally through the electronic system of the Ministry and pursuant to the by-laws made available by the latter to the shareholders. No formality will be required in any case (public deed or policy), although the use of notaries public or other public authority is optional;
- 2) The electronic system will generate a social contract of the incorporation of the SAS electronically signed by all shareholders and, once the Ministry carries out the corresponding information verification, said social contract shall be electronically sent to the Public Registry of Commerce for its entry therein;
- 3) They may only be incorporated by one or more individuals (natural persons), which will be solely obliged to the payment of their contributions represented in shares;
- 4) One of the shareholders must have the authorization for the use of the corporate name issued by the Ministry;
- 5) It is required that all the shareholders have an in force advanced electronic signature certificate (FIEL);
- 6) By no means, the individuals that are shareholders of a SAS may be simultaneously shareholders or have any interest in any other type of business corporation, if their participation/interest thereto allows them to have control of said companies;

- 7) SAS may not have annual revenue over 5 million pesos, which amount will be updated and published annually by the Ministry in the Federal Official Gazette;
- 8) In the event the SAS exceeds the amount permitted of annual revenue, it shall transform into another corporate regime provided for in the GBCA and in the event such transformation is not carried out, the shareholder(s) of the SAS will be subsidiary, joint and unlimitedly liable before third parties, without prejudice to any other liability they may incur as a result of such default;
- 9) The management of the company may only be in charge of the shareholders of the corresponding SAS and such shareholders, as members of the Shareholders' Meeting, will have the right to participate in all decisions of the company and their shares will have equal value and will confer the same rights;
- 10) The manager of the SAS shall publish an annual report on the financial situation of the company in the electronic system of the Ministry, which failure of submitting such information for two consecutive business year, will lead to the dissolution of the company.
- 11) In the event the shareholder(s) of the SAS wish to agree on forms of organization and management different from those provided for that type of companies, they shall transform the SAS before a notary public or commercial notary, into any other type of business corporation of their choice.

In the light of the incorporation of the SAS as the corporate figure that promises to be the right vehicle to respond to the needs of the economic life of the country and promote the formality and regularization of micro and small businesses, we must look beyond and ask ourselves if they will be really able to meet the business needs of companies, considering the limitations of their regulation regarding their management and corporate and economic rights of its shareholders, and if, ultimately, they could be potentially vehicles for money laundering, considering that the compliance and verification to which notaries and public brokers on money laundering are obliged to, are not applicable to the SAS.

Hopefully, these and other issues that may arise as a result of the incorporation of SAS will be solved and may be subject to improvement. Only time will tell if, they are indeed a vehicle that works as expected.



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Sincerely,

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Mexico City, March 18th, 2016.