

Doing business in Mexico: Legal myths and realities.



Export Working Group

Tuesday, March 8th, 2016, 2:00-3:00 PM (Eastern)

Martin & Drought PC

jgarcia@mdtlaw.com

Doing business in Mexico: Legal myths and realities.

Introduction

Doing business in Mexico for any foreign company or foreign investor is simpler today, than how it was 10 or 15 years ago.

Thanks to NAFTA and other free trade agreements, Mexico has simplified the process of doing business through a number of legal reforms that have shaped Mexico and made it an “open borders” country. However, there are legal hurdles to be considered.

The following are the most common legal myths that I come across with clients:

Martin & Drought PC
jgarcia@mdtlaw.com

Doing business in Mexico: Legal myths and realities.

Mexican company required to operate in Mexico. Myth 1.

Reality 1.

- NAFTA: No legal need to form a Mexican company to do business in Mexico.
- However, advantages include taxes and limiting liabilities.
- Most common are Mexican corporation *Sociedad Anonima* and Mexican limited liability company *Sociedad de Responsabilidad Limitada*.

Doing business in Mexico: Legal myths and realities.

Mexican partner required to set up a Mexican company. Myth 2.
Reality 2.

- Since 1993 general rule allows 100% of foreign investment in all Mexican companies, unless the business activity is otherwise restricted by the statute.
- 15 amendments since 1993 to accelerate, relax and remove restrictions or limitations on foreign investment.
- Mexican partners or Mexican partners with a majority interest are only required by statute on limited sensitive industries, including domestic transportation, fishing, port activities, and education.
- Business reasons may warrant a Mexican partner (market experience).

Martin & Drought PC
jgarcia@mdtlaw.com

Doing business in Mexico: Legal myths and realities.

Foreigners can not own land in Mexico. Myth 3.

Reality 3.

- Except for *Zona Restringida*, 100 km along the border, and 50 km along the coastline, there are no restrictions.
- Acquisitions in the rest of the country, require a notice.
- Restrictions in *Zona Restringida* can be bypassed by acquiring through a Mexican company, or a Mexican trust *fideicomiso*.

Doing business in Mexico: Legal myths and realities.

Mexican taxes are higher than US taxes. Myth 4.

Reality 4.

- Highest corporate tax rate in Mexico is 30% (USA is 35%), highest income tax rate for individuals is 35% (USA is 39.6%)
- Mexico and USA parties to tax treaty that avoids double taxation, allows other benefits, including lower tax rates and in some instances, no Mexican taxes at all.
- Taxes paid in Mexico (by US companies and individuals) can be credited towards any US income tax due in the USA.

Martin & Drought PC
jgarcia@mdtlaw.com

Doing business in Mexico: Legal myths and realities.

Mexican laws are archaic and obsolete. Myth 5.

Reality 5.

- Mexico has a civil law system, based on codes and statutes.
- Process of enacting or amending codes and statutes is done by Federal Congress or local (state) Congresses throughout Mexico.
- NAFTA: Mexico has modernized its laws and regulations for over 20 + years. Legislation closely resembles and follows US laws and regulations. Examples include environmental, telecommunications, energy, privacy, commercial laws to accommodate technology and e-commerce.
- Most talked about change: oral trials *juicios orales* although not by juries, decided by judges, unheard of in Mexico 15 years ago.

Doing business in Mexico: Legal myths and realities.

Contracts are non existent and unenforceable in Mexico. Myth 6.

Reality 6.

- Mexican Court system in need of repair.
- Creation of specialized Courts (taxes, elections, bankruptcies). Federal agencies are specialized (oil and gas, antitrust, telecommunications)
- Alternative dispute methods: mediation and arbitration.
- Despite challenges, contracts are still preferred method of conducting business, and for the most part, contract performance as well as enforcement, are both normal expectations of any party entering a contract.

Martin & Drought PC
jgarcia@mdtlaw.com

Doing business in Mexico: Legal myths and realities.

*Publication is designed to provide information regarding the subject matter covered and is not to be considered as legal advice by the authors.

Jorge A. Garcia

Martin & Drought PC

300 Convent St., 25th Floor

San Antonio, TX 78205

Tel: (210) 220-1335, Fax: (210) 227-7924

jgarcia@mdtlaw.com

www.mdtlaw.com

Martin & Drought PC

jgarcia@mdtlaw.com