

# Single Shareholder/Partner Entities in Mexico

**February 9, 2012 by Larissa Calva-Ruiz**

Corporate laws and entities in Mexico have several key differences with their respective counterparts in the United States. One of the most notable differences is the number of shareholders, members or partners needed to incorporate any type of entity. While in the United States it is permissible and customary to set up a corporation or limited liability company with one shareholder/partner, this is not allowed under Mexican law. Consequently, we find a considerable number of entities incorporated in Mexico with one "real" majority shareholder/partner and another minority "phantom" shareholder/partner (a straw man), whose sole purpose is to fulfill a corporate formality.

Since 2006 legislators in Mexico have tried to amend Mexico's Law of Commercial Entities, Civil Code and Commercial Code (the "Laws") to allow for sole shareholder/partner entities. Their most recent attempt (2010) was vetoed by President Felipe Calderon. President Calderon opposed the bill because he considered that the reforms would not simplify the creation of sole shareholder/partner entities but would instead over-regulate such entities; in the President's view, the entire purpose of a sole shareholder/partner entity is to be as uncomplicated and practical as possible.

In response to the President's vetoed bill, a new bill was introduced in 2011 by the House of Representatives. Some of their reforms include the following:

- Sole shareholder entities are limited to corporations and limited liability companies, since these are the entities most widely used in Mexico.
- The words "Sole Partner Limited Liability Entity" (*Empresa Unipersonal de Responsabilidad Limitada*) or "Sole Shareholder Corporation Entity" (*Empresa Unipersonal Anónima*) shall be added after the name of these types of entities.

- Provisions referring to meetings and calls for meetings shall not be applicable to sole shareholder/partner entities. All shareholder/partner's decisions shall be taken by written resolutions and recorded in the entity's book of minutes.
- Entities originally incorporated with only one shareholder/partner shall be referred to as "inceptive sole shareholder/partner entities" (*empresa unipersonal originaria*); entities originally incorporated as a limited liability company or corporation which then became a sole shareholder/partner entity shall be referred to as "succeeding sole shareholder/partner entity" (*empresa unipersonal sobrevenida*).
- Sole shareholder/partner entities shall be incorporated before a notary public or public commercial attestor and be registered before the Public Commercial Registry.
- Agreements entered into by the sole shareholder/partner entity shall also be recorded in a special book and shall be registered before the Public Commercial Registry.
- Management of the entity is entrusted to the sole shareholder by operation of law. The sole shareholder/partner may appoint officers or representatives to carry out or execute any resolution or act, but ultimately the sole shareholder/partner shall be responsible for the management of the entity.

Critics of past bills have stated that the reforms to the Laws go against the nature of the sole shareholder/partner entity because they over-complicate the concept with recording and registration requirements. In theory, a sole shareholder/partner entity would be preferred by an individual over a traditional corporation or limited liability company because of simplicity, among other things. Also, notary public and public commercial attestor's services are expensive in Mexico and the costs of registration before the Public Commercial Registry could be a disincentive. It is likely that the majority of individuals who would benefit the most from these reforms would be small business owners. These individuals need capital to grow their businesses and might not be inclined to spend that money on such expenses. Finally, the fact that the shareholder/partner has to "officially" manage the entity might discourage others who are not intimately familiar with the Laws and do not understand the full extent of their duties. These individuals may be distrustful of authorities or uneasy about handling such responsibility.

Proponents of the past and most recent bill, however, claim that the sole shareholder/partner entity will greatly benefit commercial and service sectors in Mexico because medium to small business owners will have their own companies and through them, they will be able to obtain previously inaccessible funds, bids and subsidies from banks and/or the government. An even greater incentive is the fact that these individuals will no longer risk all their capital; they will only be liable up to the amount of the entity's corporate capital. Furthermore, the creation of these types of entities would also help to keep track of and would regulate what is commonly known as

informal commerce (*comercio informal*). This concept refers to small businesses that operate informally and outside of the law. Having a legally incorporated entity will give these businesses legitimacy and at the same time, will provide legal certainty to any third parties with whom they do business. The most obvious benefit of these reforms is the elimination of straw men in companies where at least two shareholders/partners are needed. It is extremely common to see corporations or limited liability companies in Mexico with a minority shareholder/partner who holds 1% of the corporate capital only to fulfill the two shareholder/partner requirement.

In conclusion, even if there are certain downsides to the aforementioned reforms, it appears that the benefits far outweigh them. In practice, sole shareholder/partner entities have existed for a long time with the use of straw men and these reforms will once and for all acknowledge such entities formally. Individuals will finally be able to incorporate their own entities without procuring a second partner or shareholder. Many doors previously closed to individuals and only accessible to entities will now open and faster, more practical commercial proceedings will also be available to these individuals. The key will be the actual language of the bill and whether President Calderon will support it. We hope sole shareholder/partner entities will soon be an option for many of our clients who in the past have either personally been that minority shareholder/partner or have needed to use subsidiaries to set up corporations or limited liability companies in Mexico.