

IN LINE WITH INTERNATIONAL STANDARDS: MEXICO'S NEW SECURITIES MARKET LAW

A new law regulating Mexico's securities market will come into force this year. Jorge Sánchez-Davila, a partner at Goodrich, Riquelme y Asociados, explains the main aspects of the new law and how it should improve the market's procedures.

The Mexican Stock Exchange is over 110 years old, but has not yet reached its potential as an effective financial vehicle for financing medium-sized and large companies. To develop this capability, the Mexican Federal Congress enacted a new securities market law in December. This will become effective, in the main, 180 calendar days after its publication in the *Official Gazette of the Federation*.

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In particular, the law aims to effectively promote the access of medium-sized companies to the securities market, through implementing good corporate governance practices and regulations, and providing adequate protection for minority shareholders, as well as an improved legal framework governing publicly traded companies. It also seeks to: improve the operational framework applicable to the stock exchange, brokerage houses, and institutions for the deposit of securities and other participants; increase sanctions and penalties for those directors and officers who violate the law; and redefine the roles, scope and authority of the financial entities supervising and regulating the securities market.

The most relevant aspect of the law is the creation of three new legal types of entities: *Sociedades Anónimas Promotoras de Inversión* (SAPIs), *Sociedad Anónima Promotora de Inversión Bursátil* (SAPIB), and *Sociedad Anónima Bursátil* (SAB).

SAPIs are stock corporations which are designed to promote domestic and foreign investment by allowing certain exemptions from general corporate regulations. For example, SAPIs are not subject to the supervision of the National Banking and Securities Commission. Minority shareholders also have additional protection, such as the right to appoint a director and an examiner, the right to call a meeting with a 10 per cent stake of the equity, and other rights, such as puts, calls, tag alongs, drag alongs, and so on.

SAPIBs are similar to SAPIs, but they must become publicly traded companies – more specifically a *Sociedad Anónima Bursátil* (SAB) as described below – within a three-year period. As such, they must have at least one independent director and provide a programme for the progressive adoption of the regime applicable to SABs; they can also trade shares with or without a public offer, subject to certain conditions. SAPIBs are the middle option between SAPIs and SABs.

The third type of corporation introduced is the SAB, which is a different corporation to the common publicly-held entity. The difference lies in the novelties introduced in the new law, such as the duty of care and duty of loyalty for members of the board of directors.

The duty of care obliges directors to always discharge their duties in good faith and in the best interest of the company. They must request and properly revise the information they deem necessary, solicit the participation of other relevant officers and auditors at board meetings, regularly attend the meetings and adjourn them when proper information is lacking, and reveal relevant information to the board and various committees created under the securities market law.

The duty of loyalty, on the other hand, is based on the need for confidentiality and avoidance of conflicts of interest. It also prevents directors and individuals with decision-making authority from acquiring particular interests or trying to seize a business

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opportunity that pertains to the corporation. From a practical standpoint, this duty provision is crafted to prevent directors from voting on matters in which they have a conflict of interest. Directors must also follow certain guidelines on transactions with related parties, and refrain from taking advantage of the corporation's assets or benefiting from privileged information to which they might have access. Several criminal and economic sanctions are provided in case of violations of these duties.

These changes made in the securities law have been expected for a long time by the legal community. The law aims to align domestic regulations with modern international standards; this is particularly true of issues such as disclosure of information to investors, minority rights and corporate governance.

The new law is expected to foster venture capital financing, increase the number of publicly traded companies, and boost securities activity in the market, as investors will have more certainty as to the financial information revealed, the protection afforded to minority shareholders, and stricter compliance rules imposed upon directors, auditors and individuals participating in the operation of corporations. Meanwhile, lawyers have welcomed the development, sharing a belief that it will provide a modern and well-designed framework to attract more capital into the market.