Joint ventures in Mexico: overview
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DOMESTIC COMPANY JOINT VENTURES (JVs)

1. Are JVs expressly regulated?

General JVs are not expressly regulated in Mexican law. However, a specific type of contractual JV, Asociación en Participación (AenP), is expressly regulated in the General Law for Business entities (Ley General de Sociedades Mercantiles), Articles 252 to 259.

Types

2. Which types of JV are allowed?

Even though only contractual JVs are expressly regulated through the AenP, other types of JVs are also allowed.

Contractual JV

The AenP is an agreement where a party grants goods or services to another party in exchange for a participation in the profits and losses of a business negotiation or one or several commercial operations. This type of JV is not a separate legal person from the parties.

Distribution of profits and losses must be distributed proportionately to the parties’ respective contributions (subject to the AenP agreement).

Also, subject to the AenP agreement, the operation, dissolution and liquidation of the JV are regulated by the Sociedad en Nombre Colectivo (collective name partnership) business entity type provisions.

Corporate JV

This type of JV has a separate legal personality from the parties. This business combination is not expressly regulated under Mexican law (see Question 1). However, the parties to a JV agreement can use this vehicle to incorporate companies or corporations with the sole purpose to establish a short, medium or long term business relationship.

Public-private JV

Public-private partnerships can also be used to form a JV. Public-private partnerships are used to establish a contractual relationship between public and private entities in projects for the provision of a determined service using a public infrastructure. Public-private partnership must have the purpose to increase social welfare and investment in Mexico. These types of business combinations are regulated by federal and local laws.

Productive investment, applied investigations and/or technological innovation projects can also adopt a public-private partnership structure.

3. What are the principal corporate/company laws governing corporate JVs?

As companies or corporations, corporate JVs are usually governed by the General Law of Business Entities.

However, a special type of company, the Sociedad Anónima Promotora de Inversión (SAPI), is governed by the Securities Market Law, as it is a limited liability stock company.

Depending on which specific activities a corporate JV will engage in, special regulations may apply. Also, a corporate JV may need authorisations from certain governmental entities to perform specific activities. The Foreign Investment Law and its regulations establish certain material limits for foreign investors. These limitations depend on the activity and the economic agent who performs it.

Activities reserved to the government

The reserved activities are divided by strategic areas, and only the Mexican Government can perform such activities. The reserved activities include nuclear power generation, telegraphy, radiotelegraphy, and control, supervision and vigilance of harbors, airports and heliports.

Activities reserved for Mexican citizens and/or Mexican entities with foreigners exclusion clause. These reserved activities include (among others):

- Terrestrial transport of passengers, tourism and cargo.
- Banking development institutions.

Specific regulation activities. Although these activities can be performed by foreign investors, they are limited by their participation percentage in the entity and they require prior approval from the National Foreign Investment Commission. These reserved activities include (among others):

- Manufacture and commercialisation of explosives, firearms, ammunition, fireworks.
- Publishing printing of newspapers of national exclusive circulation.

Some activities can be developed by foreign investors who participate with up to 49% of the total participation in the entity. However, prior approval of the Commission is required. These activities include (among others):

- Port services for ships to perform their operations of internal navigation,
- Airport or aerodromes concession companies
- Educational services from elementary school to college.
4. What are the typical JV founding documents for a corporate JV?

For a corporate JV, the founding documents include:

- Incorporation deed, which must set out the bye-laws and confirm registration in the Public Registry of Commerce.
- Depending on the activities in which the corporate JV will engage, authorisation from governmental entities or registration in certain registers may be also necessary (as a founding requirement).
- Registration with the Taxpayers’ Registry and a Tax ID are necessary after the JV is incorporated and registered in the Public Registry of Commerce.
- Registration with the National Registry of Foreign Investment is also necessary if any of the founding parties are foreign individuals or entities.
- Authorisation by the National Commission of Foreign Investments is also required if the JV will engage in certain restricted activities.
- If one of the parties is making a real estate contribution, additional formalities and requirements apply.

Formation and registration

5. Is the use of foreign language in a JV’s founding documents (both corporate and contractual) restricted?

Corporate JVs

The founding documents of a corporate JV must be prepared and executed in Spanish.

Contractual JVs

For contractual JVs, there are no restrictions on using a foreign language when drafting or executing the JV agreement. However, it is recommended to add clauses for easy or simplified translation procedures. The agreement must be translated into Spanish in certain cases, such as:

- Claims regarding the agreement that must be solved by a Mexican court.
- Notices to governmental entities (such as the antitrust regulator).
- Participation in public bids or procedures.

6. Are public officers (for example, public notaries) involved in a JV’s formation procedure?

Public officers are only involved in the formation procedure of a corporate JV. This is because notary publics must grant a public deed formalising the incorporation, bye-laws and proper registration of the corporate JV before the relevant registries.

Signatures of the JV agreement of a contractual JV can be ratified before a notary public. However, ratifying the signatures does not add any value to the agreement, only certainty as to the signatures in the contract and the identity of the signatories.

7. Are JVs registered with any local registries? Are public sector bodies’ authorisations required for a JV’s establishment?

Local registries

Contractual JVs do not need to be registered with local authorities, unless the goods granted during the incorporation include any real estate property. Any transfer of ownership of real estate property must be registered in the Public Registry of Property located in the state where the property is located.

As legal entities, corporate JVs must be registered in the Public Registry of Commerce upon their incorporation.

Public sector bodies

JVs must notify the Mexican Antitrust Regulator when a certain transaction or their activities reach or exceed the thresholds set out in the Federal Antitrust Law.

Depending on the specific activities which the corporate JV will engage in, registration in certain registers and authorisation from governmental entities may also be necessary. These registries and governmental entities include the:

- National Registry of Foreign Investment.
- National Banking and Securities Commission.
- National Insurance and Bonding Commission.
- Foreign Investment Commission.

8. What other formal requirements must be complied with to validly constitute a JV?

There are no other additional formal requirements to structure a JV (other than those listed in Question 4 to Question 7). However, when setting up a JV in Mexico, it is highly recommended to engage a local attorney for advice and assistance to navigate the procedures and requirements.

Permitted markets

9. Can the JV structure be used in every industry sector? Are there any restrictions to be considered and carefully assessed before investing in a JV?

Any form of JV structure can be used in every industry sector, other than where there are foreign investment regulations forbidding or limiting foreign investments. Foreigners performing investments in a JV must carefully consider such foreign investment regulations as (in some cases) they may not engage in certain activities or industries. See Question 4 and Question 7.

Purpose

10. Can a JV be established with any purpose?

Both the contractual and the corporate JV can be established with any legal purpose. However, certain limitations, requirements and prohibitions must be considered in each specific case (see Question 4 and Question 7).
Share capital and participation

11. What possible forms of participation are there in a JV’s share capital? How can a JV member contribute and are there statutory limits on the possibility to make contributions in kind?

**Forms of participation**

The parties of a JV can freely agree the form of the participation of each party involved in the JV.

**Contractual JVs.** For contractual JVs, the form and its terms and conditions are set out in the JV agreement. However, if the agreement does not contain such provisions, the relevant rules to the Sociedades en Nombre Colectivo apply.

**Corporate JVs.** Parties in corporate JVs participate through contributions to the legal entity, in exchange for shares or partnership interests. The applicable rules to the participation depend on the type of legal entity chosen for a corporate JV and on its bye-laws.

**Contributions**

Parties can contribute to a JV cash, goods and assets, including real estate.

**Contractual JV.** If a party contributes a real estate property to a contractual JV, the property remains owned directly by the contributor before third parties, unless another formality is required pursuant to the nature of the real estate, or if it is agreed otherwise in the JV agreement.

**Corporate JV.** If real estate is contributed to a corporate JV, the contribution is deemed to be a transfer of ownership and it must be granted by a public deed and registered in the Public Registry of Property. If a party contributes assets or goods to the commercial entity, such contributions must remain in the company’s treasury for a minimum of two years. The contributing party must cover the difference in the value of the goods if during the two years the depreciation of the contributed assets or goods exceeds 25% of their initial value.

12. Can a corporate JV’s share capital be denominated in a foreign currency?

The share capital of a corporate JV cannot be denominated in a foreign currency. The share capital (whether represented by shares or partnership interests) must be denominated in Mexican pesos.

**Duration and limits on membership**

13. Are there statutory limits on a JV’s duration?

There is no statutory limit for the duration of a contractual or corporate JV.

14. Are there statutory limits on the number of members participating in a JV?

There are no statutory limits on the number of members participating in a contractual JV.

For corporate JVs, there may be statutory limits specific to the vehicle. For example, the maximum number of members/partners of a Sociedad de Responsabilidad Limitada is 50.

Public sector bodies

15. Can a public sector body enter into a JV agreement? Subject to what conditions? In particular, do public private partnerships (PPP) laws and regulations apply?

Public sector bodies can enter into a JV agreement with any third party (foreign or national) if the activity to be performed by the JV is not regulated or restricted (see Questions 4, 7 and 9).

In recent years, the Mexican Government has promoted JVs between the public and private sector, especially in infrastructure projects. Under this scheme, the public sector provides its services (civil engineering, energy supply, telecommunications, investment support to entrepreneurs and so on) using infrastructure created and managed by private companies. These mechanisms reduce the government’s financial constraints by allowing the allocation of financial resources to other priority areas while at the same time public entities keep fulfilling public needs, and allows private investors the opportunity to participate in new areas and activities.

As a result of this, legal structures in the form of PPPs have been incorporated into the Mexican legal framework to promote investment from private entities in the public sector. On January 2012 a new federal Public and Private Partnerships Law (Ley de Asociaciones Público Privadas) (PPP Law) was enacted for this purpose. The Law contributes to the previous efforts by Mexican state authorities, which previously lacked a comprehensive federal legislation to enhance the investment areas of opportunity (even though they already had local PPP legislations).

Before the PPP Law was passed, the private sector was already participating in the development of public projects (such as developing public infrastructure and rendering public services). However, these were regulated exclusively by the Law of Acquisitions, Leasing and Services of Public Sector (Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público) and the Law of Public Works and Related Services (Ley de Obras Públicas y Servicios Relacionados con las Mismas) and their corresponding regulations. However, the scope of these projects was limited given the lack of a comprehensive and clear legal framework.

Furthermore, due to the Energy Reform of 2014, the Mexican Government allowed private companies to participate in the energy market (gas and electricity). After the reform, private companies can now participate in the investment, construction, management and operation proceedings of infrastructure for the transmission and distribution of power and gas. Also, the Federal Electricity Commission (Comisión Federal de Electricidad) can now form associations with private companies in projects regarding power generation and supply. This Reform aims to decrease the public costs of generation and distribution of gas and electricity, and for the benefit from the technology and resources of private companies.

The PPP Law defines public private partnerships and establishes the various legal schemes for these projects. It also helps to promote the private sector participate in governmental areas requiring the development of infrastructure works, equipment procurement and the rendering of public services.

**Non-competition and anti-trust clauses**

16. Are there statutory constraints on the use of non-competition or anti-trust clauses in a JV agreement?

While the JV is effective

Under Mexican regulation, non-competition clauses must:

- Be limited or constrained to a specific territory.

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• Refer to a specific product or service.
• Be limited to the parties who execute the agreement.
• Set out a consideration to be paid to the party that undertakes the non-compete obligation.

These criteria are based on judicial decisions, not on statutes. Courts may determine whether a non-compete clause is valid or invalid, but a clause should be considered to be valid if meets these criteria.

**Following termination**

In addition to the criteria above, a non-compete clause must be limited in time (typically, five years).

**De facto company/partnership**

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<th>17. Must the contractual JV satisfy any conditions to avoid falling within the definition of de facto company/partnership?</th>
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Contractual JVs are not considered de facto corporations and if they are in writing, they do not need to satisfy any additional conditions to avoid falling within the definition of a de facto corporation/partnership.

In Mexico a de facto corporation/partnership (also known as irregular companies) are companies that have failed to register its deed of incorporation with the Public Registry of Commerce. As contractual JVs are not required to register at the Registry, they cannot be deemed to be a de facto company/partnership.

**Limiting member liability**

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<th>18. Can a JV agreement provide that a JV member can participate without incurring any risk, loss or reward?</th>
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Under statute, the losses of contributing partners are limited to the amount of their respective contributions. However, under the applicable law the parties can decide how to distribute losses and profits. Therefore, in the authors’ opinion, the parties can agree to participate with a limited risk or even without incurring any risk at all. On the other hand, it is unlikely that a contributing partner will participate without sharing the reward or profit, as JV is a commercial association with the objective to make a profit.

**Anti-trust**

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<th>19. Do any anti-trust rules, guidelines or policies apply to a JV agreement?</th>
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JVs are not expressly regulated by the Federal Antitrust Law (Ley Federal de Competencia Económica), but certain effects derived from JV agreements or transactions may imply a violation of antitrust provisions and therefore, falling within the definition of what may be considered as absolute or relative monopolising conduct, if the amount of the JV exceeds the thresholds determined by the Federal Antitrust Commission (Comisión Federal de Competencia).

In addition, certain agreement provisions or clauses (such as non-competence clauses and/or exclusivity agreements) in JV agreements may be considered harmful for Mexican markets by the Federal Competition Commission.

**Governance and limits on directors**

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<th>20. Can the parties to a JV freely regulate the JV or are they subject to certain restrictions?</th>
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Parties can freely regulate the JV, unless the arrangements are contrary to Mexican law.

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<th>21. Are there limits or restrictions on the eligibility of an individual as a member of the board of directors/statutory auditor?</th>
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Parties can appoint any members they agree on, unless arrangements are contrary to applicable law.

Parties to the JV can choose to have either a board of directors or a sole director. If they appoint a board of directors, it is common practice for parties to agree that they can each appoint a number of directors that is proportionate to their respective contributions to the JV.

Individuals who are prohibited from trading in Mexico cannot be appointed as directors (that is, brokers, bankrupt individuals, and individuals who have been convicted for economic crimes, including fraud, embezzlement, bribery and extortion).

Directors and statutory auditors that are foreign can still be eligible to be appointed as directors if they comply with the applicable immigration requirements while they exercise their office in Mexico.

**Termination**

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<th>22. What legal regime applies to a JV’s termination? Can a JV be terminated for just cause on request of one party?</th>
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There are no mandatory requirements regarding the termination of a JV agreement. It is therefore up to the parties to agree the term of the JV. If parties choose Mexican law to govern the JV agreement, they can terminate the agreement if the other party breaches it or (for example) they can agree that one of the parties can terminate for convenience.

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<th>23. Is the termination of a JV agreement subject to any public sector body’s approval?</th>
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Governmental approval is not required to terminate a contractual JV.

**Choice of law and jurisdiction**

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<th>24. Are there constraints on the choice of the law and the jurisdiction applicable to a JV?</th>
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Parties can choose the governing law and jurisdiction. They can also agree on non-jurisdictional proceedings like mediation or arbitration. Mexico is a signatory to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

Also, Chapter XI of the North American Free Trade Agreement 1992 (NAFTA) refers exclusively to investment arbitration and it is common practice for parties to resolve cross-border disputes using this procedure.
JVS WITH FOREIGN MEMBERS

Validity and authorisation

25. What are the rules relating to validity and authorisation of JVs with foreign parties?

Validity

Contractual JVs with foreign parties are allowed in Mexico.

Under Mexican law, all entities duly incorporated under the applicable foreign law have legal authority and capacity. However, to engage in commercial activities, foreign entities must register with the Public Registry of Commerce and the National Registry of Foreign Investment.

If the JV activities will be performed in Mexico, it is common practice for foreign entities to incorporate a fully-owned subsidiary in Mexico to enter into the corresponding JV agreement.

Also, as explained above, certain activities are restricted to Mexican nationals.

Limits

If the activity carried out by the JV is not included in the activities regulated by the Foreign Investment Law, there are no restrictions on the minimum or maximum number of the parties to a Mexican JV.

No requirement for Mexican JVs to have a minimum/maximum number of parties to be local residents.

Authorisation

JVs entered with foreign parties need authorisation of the foreign investment authorities if they exceed the thresholds of foreign participation.

Foreign entities must also register at the Public Registry of Commerce to enter into commercial agreements.

Effect of foreign membership

26. Are any of the rules relating to domestic company JVs (see Questions 1 to 24) different for JVs with members incorporated under, or governed by, the laws of a foreign country?

Foreign entities or individuals engaging in commercial activities in Mexico must register at the National Registry of Foreign Investment (Registro Nacional de Inversiones Extranjeras) and the Public Registry of Commerce (Registro Público del Comercio) (see Question 4 and Question 7).

Under the Foreign Investment Law certain activities are defined as "strategic areas", in which foreign investment is statutorily forbidden to participate (only Mexican state-owned entities may perform such activities). These include nuclear energy, radioactive minerals, telegraphs, radiotelegraphy, postal services, currency issue, control/supervision of ports, heliports and airports, and others expressly provided in other laws.

Foreign investment in some other activities is subject to a maximum foreign investment percentage. This includes transportation, radio, fishing and so on. Therefore, potential foreign investors/shareholders should ensure it is possible to invest in such activities and to incorporate suitable vehicles to participate.

Economic or financial incentives

27. Are there economic or financial incentives for foreign direct investments in a JV?

There are no specific incentives for JV foreign parties under Mexican law.

Minimum investments/contributions

28. Are there mandatory minimum equity investments or contributions in kind thresholds for a foreign JV member?

There is no minimum investment (in equity or in kind), required by law for a foreign JV member.

THE REGULATORY AUTHORITIES

National Foreign Investment Registry (Registro Nacional de Inversiones Extranjeras)

Main activities. The National Foreign Investment Registry is the federal government office in charge of recording the flow of foreign investment into Mexico. It was created to allow the government to monitor compliance with foreign investment provisions and to monitor the development of foreign investment in the country.

W https://rnie.economia.gob.mx/RNIE/faces/inicio.xhtml

Federal Antitrust Commission (Comisión Federal de Competencia Económica)

Main activities. The Federal Antitrust Commission is an autonomous body in charge of monitoring, promoting and guaranteeing free competition in Mexican markets.

W www.cfe.gob.mx/paginas/Home.aspx

Public Registry of Commerce

Main activities. The Public Registry of Commerce of each Mexican state has relevant information of all mercantile entities (including corporate JVs and foreign entities that engage in commercial activities in Mexico) that have their corporate domicile in each state. Information filed at the Public Registry of Commerce is publicly available.

W http://www.tramites.cdmx.gob.mx/temas/muestraTS/15

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**Professional qualifications.** Attorney at Law, Universidad Nacional Autónoma de Mexico, Mexico, 1991.

**Areas of practice.** Corporate law; finance; mergers and acquisitions; private equity and venture capital; real estate.

**Recent transactions.**
- Provided representation of Promotora Metropolitana for the sale of two luxury buildings in Polanco, totaling 6,600 square meters valued at US$14 million.
- Advised Newell Brands Inc in the sale of its tool business in Mexico, which includes the sale of all assets related to the business and the sale of well-positioned brands. SOLCARGO advised in the negotiation of the Master Purchase Agreement that ruled the worldwide transaction, as well as in ancillary agreements and corporate documents to comply with Mexican law. The global transaction is valued in approximately US$1.95 billion.


**Languages.** Spanish, English.

**Publications.**
- Capital Emprendedor, co-author, Instituto Mexicano de Contadores, 2011.
- The Unfulfilled Need of Venture Capital in Mexico, International Journal of Entrepreneurship and Innovation Management.
- Real Estate 2017 (Mexico), co-author, Getting The Deal Through, December 2016.

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**Non-professional qualifications.** LLM Northwestern Pritzker School of Law University School of Law, US, 2013; Certificate in Management and Business Administration, Northwestern University – Kellogg School of Management, US, 2013; Diploma in Corporate Law; Instituto Tecnologico Autonomo de Mexico, Mexico, 2009; Master at Law in International Business Law (LLM equivalent), Universidad Iberoamericana, Mexico, pending degree.

**Areas of practice.** Corporate law; finance; mergers and acquisitions; private equity and venture capital; real estate; energy.

**Recent transactions.**
- Advised Grupo Farmatodo in the negotiation and structure of a co-investment and joint-venture agreement with Controladora de Farmacias, S.A.P.I. de C.V., a subsidiary of Grupo Nadro, the largest pharma and non-pharma products distributor in Mexico.
- Advised Nautic Partners LLC in the cross-border acquisition of a subsidiary of Endries International in Mexico.
- Advised Newell Brands Inc in the sale of its tool business in Mexico, which includes the sale of all assets related to the business and the sale of well-positioned brands. The global transaction is valued at approximately US$1.95 billion.

**Languages.** Spanish, English.

**Publications.** Real Estate 2017 (Mexico), co-author, Getting The Deal Through, December 2016.

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- Assisted Newell Brands Inc in a major transaction that involved the sale of its equity in one of its Mexican subsidiary, leader in the manufacture and distribution of nylon, synthetic and cotton rope in Mexico.

Languages. Spanish, English