

## Executive Summary on the New Law on the Securities Market.





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The importance of the new Law on the Securities Market lies in the possibility of a large number of mid-sized companies having access to investments, which evidently implies a major alternative for Mexico's economic development.

At present, the Mexican securities market is small, with high potential for development, since about 140 companies participate on it, quite a limited number if we compare it to economies similar to ours. Transparency for investors is critical for the functioning and growth of the securities market. They must have access to information for the organization, permitting them to clearly identify the advantages and disadvantages of each option, as well as becoming familiar with stocks that might go against management.

It is clear that, today, with the introduction and reinforcement of best practices of corporate governance, as well as the establishment of supervision by authorities and the sanctions established, a totally different environment has been generated. This translates into assurances for investors regarding transparency in handling transactions, as well as continually seeking efficiency and eliminating risk, mainly in light of the constant interaction between the board of directors and top management.

Moreover, it is evident that board members must understand the scope of their responsibilities and ensure they have the necessary conditions for complying with them efficiently.

The most relevant aspect of this new law is the creation of three entities:

- **Sociedad Anónima Bursátil (SAB).** Equivalent to the stock company currently on the securities market, well-known among the business and investing community.
- **Sociedad Anónima Promotora de Inversión Bursátil (SAPIB).** A transition for companies that want access to the securities market, since they can be listed on the stock exchange, with all the benefits this implies. They will have three years to change to the regime of Sociedad Anónima Bursátil.
- **Sociedad Anónima Promotora de Inversión (SAPI).** Involves higher standards of corporate governance in exchange for allowing it certain exceptions to the General Law on Corporations, providing it with more possibilities of attracting investment.

	Sociedad Anónima Bursátil	Sociedad Anónima Promotora de Inversión Bursátil	Sociedad Anónima Promotora de Inversión
<b>Corporate name</b>	Should add the term “Bursátil” or the abbreviation “B” (Art. 12)	Should include the term “Promotora de Inversión Bursátil” or the abbreviation “P.I.B.” (Art. 19)	Should incorporate the term “Promotora de Inversión” or the abbreviation “P.I.” (Art. 12)
<b>Registry of shares – National Securities Registry</b>	Required	Required	Not required
<b>Duration</b>	Indefinite	Three years from the date of registration to comply with rules-plans for transfer (Art. 19)	Indefinite
<b>Exceptions to the General Law on Corporations</b>	<ul style="list-style-type: none"> <li>– Mechanisms in the case of disagreement with stockholders</li> <li>– Modifications to the right of preferential subscription referred to in Art. 132 of the General Law on Corporations</li> <li>– Limitations on Indemnization of damages caused by its advisors and relevant management deriving from the acts they carry out (Art. 13)</li> </ul>	The same as for a Sociedad Anónima Bursátil (Art. 13)	The same as for a Sociedad Anónima Bursátil, plus: <ul style="list-style-type: none"> <li>– Restriction on transfer of stock holdings</li> <li>– Exclusion of partners, exercise of rights of separation or dissenter, and amortization of shares</li> <li>– Issue, without limit, of shares without vote or with restricted vote (Art. 13, 16)</li> </ul>
<b>Administration and oversight of the corporation</b>	<ul style="list-style-type: none"> <li>– Board of Directors with at least 25% independent members</li> <li>– Committees of independent directors will carry out functions of societal practices and audit</li> <li>– The figure of Commissioner is excluded, and his/her functions and responsibilities transferred to the Board, committees and external auditor (Art. 24-26)</li> </ul>	<ul style="list-style-type: none"> <li>– Board of Directors with at least one independent member</li> <li>– Committee on societal practices presided over by independent director (Art. 19)</li> </ul>	<ul style="list-style-type: none"> <li>– Board of Directors</li> <li>– Audit Committee (Art. 14-15)</li> </ul>
<b>Board of Directors functions</b>	<ul style="list-style-type: none"> <li>– Set business strategy and internal-control guidelines</li> <li>– Identify alternatives for generating value</li> <li>– Oversee management of the corporation by the president and CEO and relevant management</li> <li>– Approve financial statements</li> <li>– Approve certain transactions, appointments and retribution to management, with the opinion of the Societal Practices Committee</li> <li>– Approve guidelines and policies relating to accounting and internal-control topics, with the opinion of the Audit Committee (Art. 28)</li> </ul>		
<b>Audit Committee functions</b>	<ul style="list-style-type: none"> <li>– Investigate possible non-compliance of which it is aware</li> <li>– Oversee that the president and CEO is complying with the resolutions of the Shareholder’s Assembly and the Board of Directors</li> <li>– Designate, supervise, evaluate and remove the external auditor, based on the determination of his fees and activities to be carried out</li> <li>– Provide an opinion on internal-control guidelines, accounting policies and additional services to be provided by the auditor</li> <li>– Discuss financial statements with management and external auditors, proposing their approval to the Board</li> <li>– Oversee that transactions with related persons and relevant operations heed the provisions of law</li> <li>– If so required, request an opinion from independent experts</li> <li>– Call to Shareholder’s Assembly (Art. 42)</li> </ul>		

<b>Societal Practices Committee functions</b>	<ul style="list-style-type: none"> <li>– Render opinion regarding transactions with related parties and relevant transactions</li> <li>– Provide an opinion on the designation, performance, remuneration and granting of loans to the CEO and relevant executives</li> <li>– If so required, request an opinion from independent experts</li> <li>– Call to Shareholder's Assembly (Art. 43)</li> </ul>
<b>Duties of advisors and directors</b>	<p><b>Diligence.-</b> Be informed and prepared for Board and committee sessions. Evaluate the sufficiency and veracity of the information, and oversee the correct use of human resources and materials (Art. 30)</p> <p><b>Loyalty.-</b> Make decisions without conflict of interest. Maintain the confidentiality of information, making sure relevant information is made public, and reveal the necessary information to the Board for decision-making and any conflicts of interest (Art. 34)</p> <p><b>Faithfulness.-</b> Do not compete with the corporation, nor take over business opportunities corresponding to it</p>
<b>Responsibilities of Directors and Managers</b>	<p>Directors, CEOs, and relevant management will respond for the damages they cause shareholders, when they intentionally carry out or order the following acts be carried out:</p> <ul style="list-style-type: none"> <li>• Spread false information or information inducing error</li> <li>• Fail to register corporate transactions or alter the accounting records of the same</li> <li>• Hide relevant information or events that should be released to the public or to shareholders</li> <li>• Destroy, totally or partially, documentation relative to accounting entries</li> <li>• Grant the use or enjoyment of corporate goods or services in favor of persons exercising decision-making power, without the approval of the stockholders</li> <li>• Approve or reject transactions that notoriously injure the corporation</li> <li>• Intervene in resolving affairs or in carrying out transactions with a conflict of interest</li> <li>• Fail to maintain discretion or the confidentiality of information</li> <li>• Compete with the corporation or take advantage of corporate business for themselves or third parties</li> <li>• Fail to exercise responsibility</li> <li>• Fail to attend to, unjustifiably, requests for information and documentation from board or committee members</li> <li>• Intentionally present false information or information inducing error to directors or committee members (Art. 35-36)</li> </ul>
<b>Business judgment rules</b>	<p>Regarding the approval of transactions injuring the corporation, as well as exercising responsibility, directors, CEOs and relevant management will not be responsible when damages are generated in virtue of:</p> <ul style="list-style-type: none"> <li>• Making decisions or voting on the basis of information provided by independent experts or external auditors</li> <li>• Making business decisions, as long as they were the best alternative or negative effects were unforeseeable</li> <li>• Complying with the resolutions of the stockholders</li> <li>• Having complied with the functional requirements established in the law and bylaws (Art. 40)</li> </ul>
<b>CEO</b>	<ul style="list-style-type: none"> <li>– Exercise the functions of management and leading the business</li> <li>– Propose business strategy and internal-control guidelines to the Board</li> <li>– Be responsible for the preparation and content of the relevant information on the corporation and its release to the public</li> <li>– Be responsible for the existence and maintenance of accounting, control and registry systems, as well as other functions corresponding today to the Board (Art. 44)</li> </ul>
<b>External auditor</b>	<ul style="list-style-type: none"> <li>– Have an independent external auditor (Art. 41)</li> <li>– The external auditor may be called to Board sessions in as an invitee, with voice and no vote (Art. 27)</li> <li>– Issue an expert opinion regarding financial statements, elaborated on the basis of auditing norms, to wit: <ul style="list-style-type: none"> <li>• Veracity, sufficiency and reasonableness of financial information</li> <li>• Accounting principles and significant estimates</li> </ul> </li> </ul>

<b>Responsibilities of auditors, attorneys and professionals</b>	<p>Auditors, external attorneys and professionals issuing opinions will respond for the damages they cause shareholders, when:</p> <ul style="list-style-type: none"> <li>• In a negligent manner, the advisory or professional opinion provided to the public contains defects or omissions</li> <li>• Deceitfully, in that advisory opinion, false information or information inducing error is provided, prejudicial transactions are recommended, or an operation is recorded in violation of accounting principles (Art. 347)</li> </ul>		
<b>Controlling shareholders and persons with significant power or influence</b>	<p>Shareholders maintaining control of the corporation will respond for the damages caused, when they:</p> <ul style="list-style-type: none"> <li>• Approve or reject transactions in the stockholders' meeting that produce notoriously injurious effects for the corporation, in violation of the opinion or resolution of the Board</li> <li>• Avoid, through mechanisms or machinations, the application of norms of an imperative or prohibitive nature of the Law on Securities Market, which produce notoriously injurious effects for the other shareholders</li> </ul>		
<b>Releasing information</b>	<ul style="list-style-type: none"> <li>– Relevance principle</li> <li>– Prospectus</li> <li>– Annual report</li> <li>– Annual financial statements audited</li> <li>– Quarterly financial statements with annexes (Art. 104)</li> </ul>	<ul style="list-style-type: none"> <li>– Relevance principle</li> <li>– Prospectus (including schedule for the progressive adoption of the regime of Sociedad Anónima Bursátil)</li> <li>– Annual report (simplified)</li> <li>– Annual financial statements audited</li> <li>– Quarterly financial statements without annexes (Art. 104)</li> </ul>	<ul style="list-style-type: none"> <li>– Relevance principle (release of all qualitative and quantitative information whose importance affects evaluations and decision-making (Art.18)</li> </ul>
<b>Minority rights</b>	<ul style="list-style-type: none"> <li>– 10% name advisors, call Shareholder's Assembly and defer voting</li> <li>– 5% civil action against directors and management</li> <li>– 20% legal opposition to resolutions of the Assembly (Art. 50-51)</li> </ul>		<ul style="list-style-type: none"> <li>– 10% name directors, call Shareholder's Assembly and defer voting</li> <li>– 15% civil action against the Board</li> <li>– 20% legal opposition to resolutions of the Assembly</li> </ul>
<b>Acquisition of securities</b>	<p>Only institutional and qualified investors and/or individuals manifesting in writing knowledge of the characteristics, differences and risks of these corporations (Art. 20)</p>		
<b>Shareholder's Assembly</b>	<ul style="list-style-type: none"> <li>– Approves the use and enjoyment of goods and services, in favor of persons exercising decision-making power</li> <li>– Approves policy for the utilization of human and material resources</li> <li>– Approves transactions involving the sale of 30% or more assets and operations representing said percentage and carried out with related persons</li> </ul>		
<b>Crimes</b>	<ul style="list-style-type: none"> <li>– Prison term of 3-12 years for directors, CEOs, relevant management and employees who, with intent to profit, injure shareholders through the alteration of accounts or contract conditions, carrying out inexistent transactions or expenditures, or exaggerate real ones, or, knowingly, do any act or transaction injuring the assets of the corporation (Art. 386)</li> <li>– Prison term of 2-10 years for those carrying out a public offering of securities not inscribed in the registry, without having the authorization of the Commission (Art. 374)</li> <li>– Prison term of 3-9 years to those members of the Board of Directors, management or employees who offer or give information to third parties regarding the transactions, services or securities depository without the instructions of the holders or expressed instruction of the authorities so empowered (Art. 377)</li> </ul>		

<p><b>Public offerings</b></p>	<p>Offerings within Mexico made to undetermined persons to acquire, sell, subscribe or transmit securities susceptible to intermediation, whose price is determined or determinable, and are made public through the mass media (Art. 2, XVIII; Art. 6, 7, 11 and 53)</p> <ul style="list-style-type: none"> <li>• Public offerings require the prior authorization of the Commission</li> <li>• All securities previous to their offering must be registered in the National Registry</li> <li>• It is forbidden any offering, either public or direct, within Mexico, to any person and by any means, regarding securities not registered in the National Securities Registry, unless: <ul style="list-style-type: none"> <li>– It is directed exclusively to institutional and qualified investors</li> <li>– It is offered to less than 100 persons</li> <li>– It has the authorization of the Commission, taking into account the mass media to be used, the number and type of investors to which it is directed, the volume being offered, etc.</li> </ul> </li> </ul>
<p><b>Independence of Directors</b></p>	<p>Independent Directors may not include:</p> <ul style="list-style-type: none"> <li>• Management or employees</li> <li>• Persons with significant influence on decision-making power</li> <li>• Shareholders</li> <li>• Major providers or clients, or advisors or employees of major providers or clients</li> <li>• Relationship by blood or affinity to the 4th degree (Art. 26)</li> </ul>
<p><b>Statutory Examiner</b></p>	<p>In these three types of corporation, the figure of Commissioner is eliminated by distributing his/her functions among the Board, its committees and the external auditor (not the case in traditional corporations, where, because the General Law on Corporations is not modified, the Statutory Examiner may continue serving)</p>

Given the fact the new Law on the Securities Market contains a wide range of topics and particular ones; we have selected only a few conditions considered highly relevant. This brief review attempts to highlight the fact that the most important thing to take into account is that Mexico, including the business community, investing community, government and society in general, today has a regulatory framework that opens up endless possibilities for financing and growth of companies that will surely redound in benefits for our country.

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