
Mexico (corrected August 2013)

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI Ratings about 23 companies in Mexico as of 31 August 2012.

Mexico's economy historically has been controlled by a small group of elite families, and many of the country's major companies follow that model to this day. Many publicly listed companies have majority non-independent boards and controlling shareowners, which can negatively affect shareowner rights. Related-party transactions are common in Mexico; shareowner activism is relatively uncommon as a result of some restrictive regulations and low institutional investor participation in the equity markets. Mexican pension funds invest primarily in government bonds and have a reputation for being passive owners. Until recently, shifts in control were rare in Mexico; those changes that did happen lacked transparency.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent board members on public company boards (% independent board members)?	33%	Non-independent board members who are company employees or otherwise connected to the CEO and/or controlling shareowner are common in Mexico.
What percentage of companies have fully independent audit committees?	43.5%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	56.5%	Mexico's economy historically has been controlled by a small group of wealthy families with financial and political ties. Small and medium-size enterprises make up more than 95% of businesses in Mexico, and most of them are family controlled.
Is voting by proxy permitted?	Yes	
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	Yes	Companies in certain sectors (e.g., media, transportation, glass production, beer production, cement, and telecommunications) have implemented share ownership limitations.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are there (other) common restrictions on the rights of shareowners to vote in person or by proxy?	No	
Do companies adhere to a majority voting standard in the election of board members?	Sometimes	Majority voting is not common in Mexico.
Do companies allow for cumulative voting in the election of board members?	No	Cumulative voting is not practiced in Mexico.
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or non-binding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or something comparable?	No	
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or something comparable?	No	
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	No	
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	Mexico's Ley del Mercado de Valores (Securities Market Law) of 2006 allows shareowners with at least 10% of the voting and limited voting shares ¹ the right to call a shareowners' meeting.
What percentage of companies include golden shares in their capital structure?	0%	Golden shares are not used in Mexico.
Are shareholder rights plans (poison pills) allowed in this market?	No	Poison pills are not used in Mexico.
If shareholder rights plans are in use, do they have to be approved by shareowners?	na	
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	No	The shareowners' right to approve significant company transactions is limited in Mexico.
Do companies require a supermajority vote to approve a merger?	Yes, mostly	Most Mexican companies require a supermajority vote to approve a merger.

(continued)

¹Limited voting shares are shares with some form of restriction on voting rights.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	No	This kind of provision is not used in Mexico.
Are class action suits commonly used in this market?	No	Class action shareowner lawsuits are not permitted by Mexican law.
Are derivative suits commonly used in this market?	No	

na = not applicable.

Current Engagement Practices and Shareowner Rights Developments

In Mexico, shareowner engagement is still a relatively new concept. Like most markets in Latin America, Mexico's economy has historically been controlled by a small group of wealthy families. As the country adopted corporate capitalism, this history translated into the emergence of clusters of family-controlled companies. With limited access to traditional sources of capital, most major companies were either controlled by the state or run by financially self-sufficient family groups. Mexico's capital markets remain small and illiquid and are still not a primary source of financing for the country's major corporations. Pension funds and other institutional investors participate in the equity markets at a far lower rate than in other countries and therefore are less active in engagement with companies than institutional investors are in other countries.

Although controlling shareowner families in Mexico recently have been more inclined to use public stock offerings to raise capital, many have been reluctant to give shareowners any real control. More than half the Mexican companies in our study have controlling shareowners, and more than half the board members at these Mexican companies are not considered independent. Common practice for controlling families is to place many family members, company employees, and affiliates on the board, which ensures loyalty and limits the potential for effective shareowner activism. Cross-shareholding arrangements and interlocking board memberships are common in Mexico. In recent years, an increasing number of Mexican companies have added independent board members. The Código de Mejores Prácticas Corporativas (Corporate Governance Code) was updated in 2010 and emphasizes the role of a board and the concepts of independent directors, succession planning, and strategic planning.

Amendments made in 2001 to the Ley General de Sociedades Mercantiles (Company Law) include provisions to improve the regulation of basic shareowner rights. The country's 2006 Securities Market Law, which regulates public companies, requires that boards be composed of (at least) 25% independent board members.

Even though Mexico has privatized social security and has a number of large private pension funds, shareowner activism by institutional investors is still uncommon. Mexican institutional investors have been slow to acquire stakes in domestic companies and even slower to engage in shareowner activism. Despite the fact that regulations enacted in 2005 allow pension funds to invest in local equities, few funds have chosen to do so. Mexican pension funds continue to hold primarily government bonds.

To encourage risk diversification and guard against economic downturns, federal regulations prohibit Mexican pension funds from investing more than 15% of their holdings in stocks; in fact, these funds currently invest only about 2% of their capital in local equities. Mexican pension funds have the lowest rates of investment in local equities in Latin America. Mexican mutual funds currently invest 19% of their USD70 billion in assets in equities but typically acquire small stakes with limited voting power and abide by the prevailing institutional culture of passivity.

Shareowner activism by institutional investors in Mexico is further restricted by regulations that limit pension funds to investing in instruments that replicate selected share indices and forbid investment in individual listed Mexican companies.

Like most of Latin America, Mexico is negatively affected by low market liquidity. Slow-moving capital markets combined with a regulatory and institutional framework that discourages shareowner activism have made it difficult for investors to divest from troubled companies and have helped foster a culture of passive, long-term investment. Not surprisingly, engagement consultants and proxy advisory services are not common in Mexico.

A major shareowner rights initiative spearheaded in 2005 by Gil Francisco Díaz—then Mexico's secretary of finance—and supported by the country's major political parties and corporations was stifled by an opposition group led by Mexican TV mogul Ricardo Salinas.

El Centro de Excelencia en Gobierno Corporativo (CEGC, the Center for Excellence in Corporate Governance) was founded in 2004 at the Universidad Anáhuac México Sur and Deloitte México. CEGC's mission is to promote excellence among directors and executives of private and public companies in governing and implementing international best practices.

In late 2011, the Corporate Social Responsibility Index was launched by the Mexican Stock Exchange. The index is made up of companies that outperform global metrics for corporate governance, social responsibility, and environmental measures.

Legal and Regulatory Framework

Although the country's governance policies still lag behind some internationally accepted best practices, Mexican regulators are taking steps to provide better protection for minority shareowners and improve overall governance practices. A number of important reforms to the Mexican corporate governance framework have been made in the past 10 years. Mexico's capital market regulator, the Comisión Nacional Bancaria y de Valores (CNBV, the National Banking and Securities Commission) cooperated with the Bolsa Mexicana de Valores (BMV, the Mexican Stock Exchange) to produce the country's first Corporate Governance Code in 1999. An amended copy of the governance code published in 2006, the 2001 Company Law, and the 2006 Securities Market Law are the basis for current Mexican governance practices.

Although several federally imposed restrictions impede the ability of outsiders to take control of companies in certain industries, poison pills are not used in Mexico. The Mexican government reserves the right to take control of corporations in strategic sectors, and it exercised this right during the country's 1982 financial crisis.

Mexican regulations allow foreign investors to control up to 100% of the capital stock of Mexican companies. Some sectors, however, are affected by regulations that limit shareowner rights. Examples of such regulations are the Federal Telecommunications Law and the Foreign Investment Law, which prohibit foreign investors from controlling more than 49% of the outstanding shares of Mexican telecommunications companies. Any share transfers resulting in a violation of these foreign ownership requirements are invalid under Mexican law. The same restrictions apply to companies in the transportation sector.

Because of the country's high degree of concentrated economic power, shareowners in Mexican companies can be negatively affected by frequently occurring related-party transactions. Shareowners have complained that the majority owners continue to use the assets of publicly listed companies to boost their private business endeavors. Nearly half the Mexican companies researched for this manual have engaged in significant related-party transactions in the past three years.

Mexico's Company Law includes provisions on board members' fiduciary duty to shareowners. Breaches of fiduciary duty in which board members knowingly act to benefit one shareowner to the detriment of others can be penalized with prison sentences ranging from 3 to 12 years. Despite some recent improvements, shareowners still cannot rely on Mexico's court system to enforce minority shareowner rights. Arbitration is in its early stages, and Mexico's legal system suffers from being slow, inefficient, and weakened by corruption.

In contrast to the rights of minority shareowners in developed markets, it is generally more difficult for minority shareowners in Mexico to exercise their rights because of the powers that board members or majority shareowners enjoy. Mexican laws require non-Mexican shareowners to agree to be considered Mexicans with respect to their shares and forfeit the right to invoke the protection of their own governments. Shareowner rights in Mexico are limited by the fact that Mexican civil procedure does not allow shareowners to initiate the same types of class action lawsuits or shareowner derivative actions as some other markets permit. Although class action lawsuits do not exist in Mexico, the country's laws do provide shareowners of 20% of the shares outstanding with the right to contest shareowner resolutions. In addition, according to Article 38 of the Securities Market Law, shareowners representing at least 5% of a company's outstanding shares may directly bring a civil liability action against any board or committee member.

The 2006 Securities Market Law allows shareowners of 10% of outstanding shares to appoint one board member and call emergency general meetings. Shareowner rights are not limited by staggered board structures. Mexican companies have a single-tier board structure.

Key organizations with information relevant to shareowner rights in Mexico include the following:

Bolsa Mexicana de Valores (Mexican Stock Exchange) (www.bmv.com.mx)

Comisión Nacional Bancaria y de Valores (National Securities and Banking Commission) (www.cnbv.gob.mx)

Comisión Federal de Competencia (Federal Competition Commission) (www.cfc.gob.mx)

Secretaría de Hacienda y Crédito Público (Secretariat of Finance and Public Credit) (www.shcp.gob.mx)

Comisión Nacional del Sistema de Ahorro Para el Retiro (National Retirement Savings Commission) (www.consar.gob.mx)

Centro de Excelencia en Gobierno Corporativo (Center for Excellence in Corporate Governance) (www.uas.mx/cegc)

Consejo Coordinador Empresarial (Mexican Business Coordination Council) (www.cce.org.mx)

Organisation for Economic Co-Operation and Development (www.oecd.org)

Inter-American Development Bank (www.iadb.org)

International Finance Corporation (www.ifc.org)