

haynesboone

Setting precedent.

TRAVEL ADVISORY: LESSONS LEARNED FROM THE (OFTEN BUMPY) ROAD OF GLOBAL DEALMAKING

Presented to
THE 2008 CLE SYMPOSIUM
of the
Association of Corporate Counsel – DFW Chapter
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TOPICS TO BE COVERED

1. Avoiding International Corporate Compliance Pitfalls
2. Making your Mexico deal *no problema!*
3. Ten Tips for the Global Deal Lawyer

International Compliance

- Deals/Transactions increasingly must take into account compliance issues
- FCPA is main compliance issue
- An area where US law reaches across international borders (extraterritoriality)
- Could even impact companies that don't think they are working "internationally"

What is the FCPA?

- U.S. law passed in 1977 to prohibit bribery of foreign officials.
 - SEC Report on Corporate Bribery
 - OECD Antibribery Convention (1998)
- Two key components:
 - Anti-bribery provisions (targeting the person paying the bribes).
 - Accounting provisions: require accurate books and records and adequate accounting controls.

FCPA: Anti-Bribery Basics

Prohibits corrupt offers or payments to foreign government officials, political parties, political party officials or candidates, or to any person for payment to such a foreign official or candidate for improper advantage.

Enforcement Trends

- Aggressive Enforcement
 - Larger penalties
 - Vetco Gray, 2/07: \$26.0MM (criminal fine)
 - Baker Hughes, 4/07: \$44.1MM (criminal fines, civil penalty)
 - Multinational Investigations/Cooperation
 - Siemens is under investigation by DOJ, SEC and agencies in Europe for corrupt payments in connection with operations in China, Hungary, Indonesia, Israel, Italy, Norway and Russia, together with a separate Oil-for-Food corruption investigation!

Enforcement Trends (cont.)

- Individual prosecutions
 - Since 1990, twice as many prosecutions against individuals as corporation
 - In 2007, US Government secured five guilty pleas from corporate executives
- More Investigations
 - Nov. 2007 New York Times article: DOJ have 60 cases under investigation and five-member FBI team

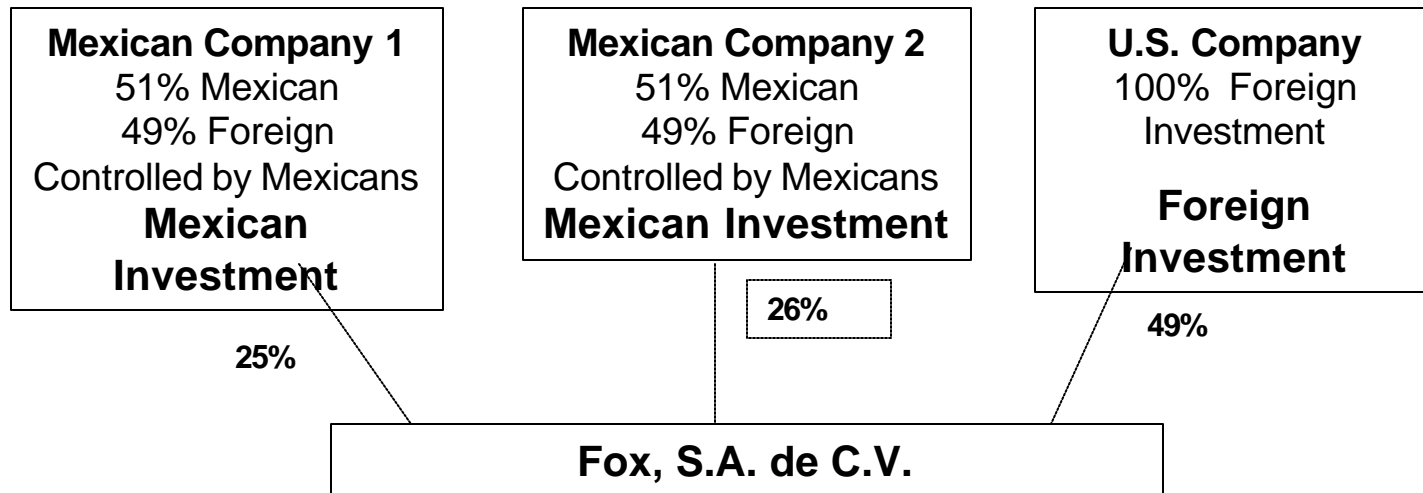
Other Hot Topics

- More “Foreign Officials”
- Auditing Agents
- Acquisition Due Diligence
- Compliance Monitors
- Voluntary Disclosures

-MEXICO – WHAT TO CONSIDER

- Foreign Investment Restrictions
- Labor Matters
- Antitrust Regulations
- FCPA Compliance
- Corporate Structure

STRUCTURING THE FDI DEAL IN MEXICO



Fox, S.A. de C.V. has only 49% Foreign Investment

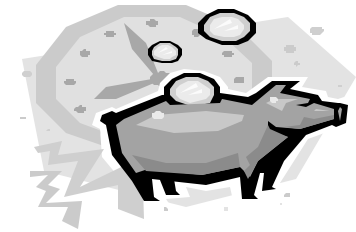
LABOR

Employee Benefits by Law

- **10% annual profit sharing (exception: 1st year of activities) (legal representative also not eligible)**
- **Vacations between 6 and 12 days a year**
- **Housing: 5% of salary**
- **Christmas Bonus: 15 days of salary (Aguinaldo)**
- **Retirement Fund: 2.5% of salary**
- **Social Security: variable (around 4% of salary)**
- **Burden of proof is on employer to show it has complied with law**
 - **Practice Tip – Service and employment agreements should always be in writing**

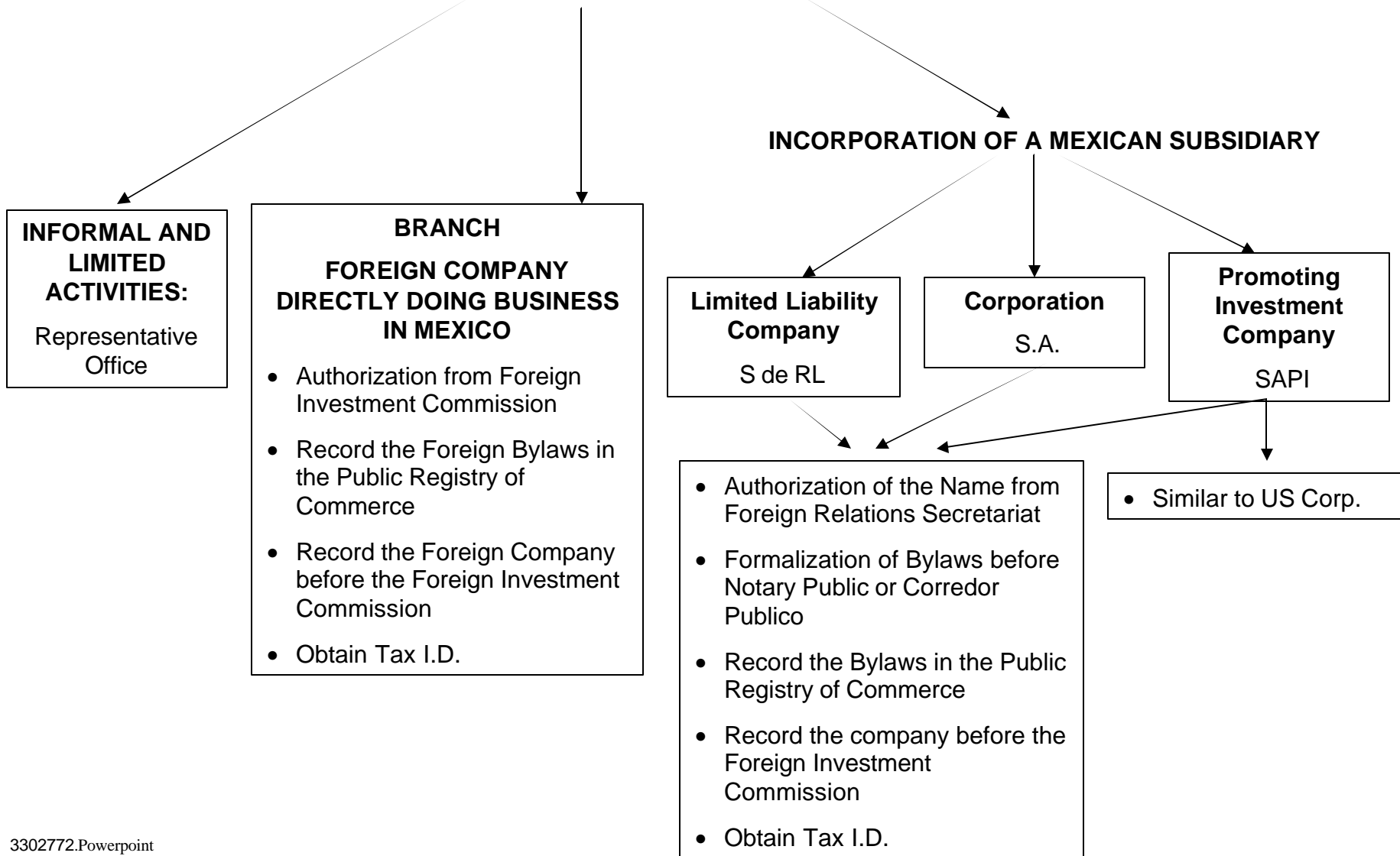


LABOR, *continued*



- **Statutory Severance**
 - Three months of salary
 - “Salary” defined broadly to include benefits
 - Seniority bonus (12 days of wages per year of service when employee has 15 or more years of seniority)
- In actions to reinstate an employee, employer must pay salaries “generated” during litigation if employer doesn’t prevail

DOING BUSINESS IN MEXICO



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10. Time Zones Are Your Friends