

Nearshoring in Mexico and the Convenience of Guaranty Trusts

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In today's globalized business landscape, an in-house counsel faces a myriad of challenges and opportunities. One strategy that has gained significant traction and deserves the attention of legal teams is nearshoring. Nearshoring presents a range of benefits, and Mexico has emerged as a premier destination for this approach with its nearshoring landscape evolving at a rapid pace. Additionally, the legal figure of the Guaranty Trust presents several benefits to U.S. companies looking to take advantage of the benefits Mexico has to offer. In this article, we will explore the status of nearshoring in Mexico and why it has become a preferred destination for companies around the world, as well as the convenience of Guaranty Trusts in the jurisdiction.

Nearshoring: The Global Trend Transforming Business Operations

Before delving into Mexico's status as a nearshoring hub, let's briefly define what nearshoring is: Nearshoring is a practice where companies choose to outsource some of their business functions or manufacturing processes to countries geographically close to their home base. The aim is to reduce costs, improve operational efficiency, and maintain closer control and communication compared to offshoring to more distant locations.

Several factors contribute to Mexico's appeal as a nearshoring destination:

- **Proximity:** Mexico's close proximity to the United States is a significant advantage. This allows for quicker and more cost-effective transportation of goods, reduced time zone differences, and easier travel for management and teams between the two countries. Additionally, in-house counsel can meet with legal counterparts, visit the nearshoring site, and engage in real-time discussions. This proximity greatly enhances the ability to address legal matters swiftly and effectively.
- **Trade Agreements:** Mexico is a party to numerous trade agreements in the world, such as the United States-Mexico-Canada Agreement (USMCA), NAFTA's successor, which facilitates trade between Mexico and its North American neighbors. In-house counsel can leverage these agreements to ensure smooth cross-border operations and mitigate trade-related legal issues.
- **Cost Effective:** With the rise in labor and transportation costs in China and other traditional outsourcing destinations, many supply chains have been disrupted. Mexico has a skilled labor force that commands wages that are considerably lower than in the United States, making it an attractive option for companies seeking to reduce operational costs. These potential cost-savings may allow for the allocation of resources more efficiently.

- **Cultural Compatibility:** Cultural alignment can be an overlooked benefit of nearshoring in Mexico. Shared time zones, language, and cultural similarities between Mexico and many North American businesses promote smoother collaboration and understanding. In-house counsel will find that these cultural affinities facilitate communication and foster a more harmonious working relationship between legal teams. This proactive approach can mitigate legal risks and prevent potential legal challenges.
- **Business operations:** In Mexico, foreigners have the ability to own, manage and control a Mexican entity and its operations. This includes the right to acquire ownership of land (directly or indirectly) and buildings for industrial operations. This gives companies a greater degree of control over their operations and assets and facilitates obtaining financing in Mexico.

In-house counsel can play a crucial role in advocating for nearshoring in Mexico as a strategic business decision. As businesses continue to seek efficient and cost-effective solutions to meet market demands, Mexico's strategic advantages will likely make it a preferred nearshoring destination.

Guaranty Trusts in Mexico: A Fundamental Component

Guaranty Trusts, or *fideicomisos de garantia*, have been a fundamental component of Mexico's financial and real estate landscape for decades. A Guaranty Trust is an agreement whereby a debtor/borrower or third-party obligor (trustor/*fideicomitente*) transfers title to collateral to a Mexican trust institution, which is typically a bank or other financial institution duly authorized (trustee/*fiduciario*), for the benefit of the lender (beneficiary/*fideicomisario*) according to a set of rules included in the agreement. That is, instead of the borrower conserving title to the collateral and encumbering it in favor of lender, the trustee holds the temporary title to the collateral in order to secure the compliance of the borrower's obligations. Guaranty Trusts typically have two types of beneficiaries: type A (or first place), which is usually the lender (Mexican or foreign); and type B (or second place), which is usually the borrower who will have restricted benefits under the Trust, primarily to use, enjoy and profit from the collateral.

The Guaranty Trust contemplates an administrative foreclosure process. This process is carried out by the trustee without the intervention of a judge and is designed to be significantly more streamlined than foreclosing on a non-possessory pledge, which requires filing a lawsuit and obtaining a judgment. The out-of-court procedure is agreed on by the parties when setting up the Guaranty Trust.

Guaranty Trusts have several benefits for lenders:

- **Legal Protection:** Guaranty Trusts provide lenders with a secure mechanism to protect their interests. The trustee holds collateral, such as real estate, shares, or other assets, which can be used to satisfy the debt in case of default.
- **Ease of Recovery:** In the event of a default, the lender has a clear path to the collateral held in the Trust, streamlining the process of recovering the outstanding debt.
- **Mitigation of Risks:** Lenders can mitigate risks associated with the borrower's financial health, as the Trust can be structured to facilitate prompt and efficient actions, such as foreclosure or asset sale, if necessary.

- Flexibility: Guaranty Trusts are versatile and can be tailored to meet specific financing requirements. They can be used for both secured and unsecured loans, providing flexibility in structuring transactions.

Additionally, Guaranty Trusts can benefit borrowers by providing:

- Access to Financing: Guaranty Trusts make it easier for borrowers to access financing, even when they lack substantial collateral or credit history. This can be particularly beneficial for small businesses and startups.
- Protection of Assets: Borrowers can protect their assets, as Guaranty Trusts ensure that lenders have a legal claim to the designated collateral, rather than broader claims against all the borrower's assets.
- Transparent and Trustworthy Transactions: The use of a trustee provides transparency and ensures that the interests of all parties involved are protected. This can foster trust between borrowers and lenders.

When nearshoring to Mexico, business might engage in complex financial transactions, and a Guaranty Trust can serve as a secure and reliable mechanism to safeguard investments and ensure financial commitments. Mexico's geographic proximity, cost advantages, and cultural compatibility with North American markets make it an attractive destination for businesses seeking to optimize their operations. While challenges exist, they are manageable with the right strategies and partnerships. A Guaranty Trust is just one example of a versatile financial instrument that could be used by U.S. Companies engaged in business with Mexican counterparts.