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Controlling Beneficiary Rules in Mexico

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Agenda

- Who is Responsible
- Obligations
- Additional Responsible Parties
- Who is a Controlling Beneficiary
- Information/Documentation Required
- Information Exchange
- Fines



Who is Responsible

- Legal entities
 - Mexican legal entities
 - Foreign legal entities registered to do business in Mexico/Permanent Establishments?
- Trustees (Mexican Financial Institutions), Trust Settlers (of Mexican *Fideicomisos*), Trust Beneficiaries (of Mexican *Fideicomisos*)
- Parties to or Members of any other Legal Figure (Joint Ventures?)



Obligations

- Obtain information relating to controlling beneficiaries
- Maintain such information as part of the financials
- Update controlling beneficiary information (within 15 days of any change)
- Provide it to the Tax Authority upon request
 - 15 working days
 - May be extended 10 more working days upon request
- Implement reasonable internal control procedures to obtain and maintain identifying information



Additional Responsible Parties

- Notaries and others that participate in the formation or execution of documents related to contracts or other legal documents resulting in the incorporation of legal entities, or settlement of trusts, or creation of any other legal figure; and
- Financial Institutions (with respect to beneficial owners of accounts)
 - Must obtain identifying information about controlling beneficiaries, must establish reasonable procedures to verify their identities, and must provide said information to the Tax Authorities upon request (KYC)



Controlling Beneficiary

- Individual or group of individuals that:
 - I {
 - Directly or indirectly obtain(s) the benefit(s) of participating as member(s) in a legal entity, or trust, or any other legal figure, or
 - Ultimately exercise any rights to a good or service, or
 - Are those individuals in whose name a transaction takes place, even if done on a contingent basis
 - II {
 - Directly or indirectly, or on a contingent basis, exercise(s) control of the legal entity, trust, or other legal figure, be it through a majority stock ownership, by contractual agreement, or by means of any other legal arrangement:
 - Imposing, directly or indirectly, their decisions on the shareholders' meetings or any other analogous decision making body, or appoint or remove a majority of board members, managers, or their equivalents
 - Maintaining ownership of stock rights to exercise the vote of at least 15% of the voting rights
 - Direct the management, strategy, or policies of the entity, trust, or legal arrangement
 - III {
 - With respect to trusts, the settlor(s), the trustee, and the beneficiary(ies), as well as any other person that ultimately exercises effective control, even on a contingent basis
- Note: Ordering Rule



Identifying Information

- Full name matching official ID
- Alias
- Date of Birth, and if applicable Date of Death
- Gender
- Place of Birth and Nationality
- CURP or equivalent number
- Country of tax residence
- Type and number of official ID
- Tax ID
- Civil Status (and identifying information of spouse or common law spouse, including information about community property or separate property)
- Email and telephone numbers
- Address



Identifying Information

- Nature of relationship with legal entity, trust, or legal figure
- Degree of control
- Form of control (direct or indirect)
- Number of shares or equivalent rights, series, par value
- Place where share certificates or similar are maintained
- Date in which individual became controlling beneficiary
- All identifying information of sole manager or all member of board of managers
- Dates of any change in the participation or control
- Types of change
- Date where participation or control ended



Identifying Information

- With respect to indirect corporate participation:
 - Name of each legal entity, trust, or legal figure
 - Jurisdiction of formation
 - Tax residence
 - Tax ID
 - Tax domicile



Information Exchange

- The Tax Authority may provide controlling beneficiary information to treaty parties upon request
- Automated Exchange?

Fines

- For not obtaining, maintaining, or providing information to the tax authority upon request: MX1,500,000 to MX2,000,000 (approx. \$80,000 to \$110,000) for each controlling beneficiary
- For not updating information: MX800,000 to MX1,000,000 (approx. \$45,000 to \$55,000) for each controlling beneficiary
- For providing incomplete or incorrect information: MX500,000 to MX800,000 (approx. \$30,000 to \$45,000) for each controlling beneficiary



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