

INTERNATIONAL

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This article provides an overview on how authority is granted within Mexican corporations as well as the role corporate actors play therein. It also provides some practical considerations on how powers of attorney granted in a foreign jurisdiction become effective under Mexican Law.

Granting of Authority in a Mexican Corporation and Considerations Regarding Foreign Powers of Attorney to Be Used in Mexico

ABOUT THE AUTHOR



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ABOUT THE COMMITTEE

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The granting of powers of attorney is essential for the life of a corporation, as it is a legal way for a corporation to contract with third parties. The authority to bind a Mexican corporation may be granted, in general, through either the directors or officers, or by means of a shareholders' meeting. Such shareholders' meeting, as supreme body of the corporation, may always have the last word when it comes to controlling who may bind the corporation.

With respect to the directors or officers of the corporation, their power to grant authority in the corporation derives from the inherent authority they are granted by law.¹ Therefore, directors and officers may be entitled to delegate their authority through the granting of powers of attorney, only if they have expressly been authorized to do so under the bylaws of the corporation or the shareholders' meeting, as appropriate,² but always within the scope of their own authority.³

The shareholders' meeting plays an important role in the granting of authority within a corporation. In fact, the shareholders' meeting may control the board's authority through specific provisions in the bylaws of the corporation.⁴ Also, with regards to the officers of the corporation, the shareholders may control their authority

by limiting the general powers granted to them at the time of their appointment by the shareholders' meeting.

Therefore, with regards to the role that shareholders' have in the granting of authority within a corporation, Mexican law grants the shareholders' meeting broad authority to control the granting and revocation of powers of attorney as it deems convenient for the corporation.

It is important to mention that corporations usually grant general powers with specific limitations in order to narrow their scope and to avoid unwanted risks that may derive in litigation. In practice, it is recommended that such general powers be granted to few trustworthy persons and be carefully drafted to limit such powers (e.g. requiring joint signatures).

With respect to powers of attorney granted outside of Mexico to become effective under Mexican Law, such powers of attorney must be legalized (apostilled), notarized by a Mexican notary public, translated into Spanish by a certified court-appointed translator and registered. The reason behind such requirements regarding the actual way a power of attorney becomes effective in Mexico lays in the way the Convention of 5 October 1961 Abolishing the Requirement of

¹ With regards to directors, the law provides that "the representation of a corporation shall belong to its board of directors, who shall perform any transaction inherent to the purpose of the corporation except as otherwise limited by law or the Statutes of the corporation." L.S.M. art 10 (Mx.).

With regards to officers, the law grants them inherent authority to act within the scope of the attributions assigned to them. Id. art. 142.

² Id. art. 10, 142.

³ Id. art. 149.

⁴ Id. art. 10.

Legalization for Foreign Public Documents, (the Hague Apostille Convention) has been implemented in Mexico. The Hague Apostille Convention was designed for the purpose of simplifying the formalities in order for a public document to have legal effects in a country different of that where it was originally granted, and when such legalization involves countries that are parties to the Hague Apostille Convention. Countries that are parties of the Hague Apostille Convention, such as Mexico⁵ and the U.S., may take advantage of this simplified legalization system to expedite business transactions.

⁵ Mexico's senate ratified the Hague Apostille Convention, and it was published in the Federal

Official Gazette on January 17, 1994, and it became effective on August 14, 1995.

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