

Mexico



Miller Canfield provides efficient and strategic cross-border legal, business, and tax services to global manufacturers and other enterprises with operations in Mexico.

The following articles contain timely information for companies doing or contemplating doing business in Mexico.

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Are you in Compliance with Mexico's Personal Data Protection Requirements?

The "Federal Law of Protection of Personal Data held by Private Parties" (*Ley Federal de Protección de Datos Personales en Posesión de los Particulares* or LPD) was published last year, establishing the scope and principles for the collection and processing of Personal Data, but the provisions described below only became effective on **July 6, 2011**, one year after its entry into force.

Scope and Definitions

The LPD governs every aspect of the use and storage of Personal Data and Sensitive Personal Data, including the purposes for which companies collect such information, the way they store it, with whom they share it, and when and how they delete the information after it is used.

- The statute is very broad and affects all private companies or individuals doing business in Mexico.

As with similar data protection laws in other jurisdictions, like the U.S. and EU data protections acts, the LPD includes definitions of crucial terms including:

- Personal Data - any information related to an identified or identifiable individual (the "data owner").
- Sensitive Personal Data - any information that could cause discrimination or a serious risk to the data owner, such as information related to race or ethnicity, current or future health situation, genetic information, religious, philosophical and moral beliefs, union affiliation, political opinions, and sexual preference.

- Processing - any collecting, use, disclosure or storage of personal data by any means, as well as access, management, transfer or disposal of personal data.
- Any collecting of personal data must have a lawful justification and is subject to the consent of the data owner, except as otherwise provided by the LPD.

The provisions of the LPD that had to be implemented as of July 6, 2011, are:

- The designation of a person or creation of a department in charge of personal data responsible for handling all such data, including promoting protection within the company and managing the personal data rights according to the LPD; and
- The requirement to provide a Privacy Notice to each individual about whom personal data is being collected.

Privacy Notice

The Privacy Notice is a document in hard, electronic, or any other format that must be provided to the data owner, through print, digital, visual or audio formats, or any other technology, containing at least the following information:

- The identity and domicile of the entity collecting the data;
- The purposes for collecting the data;
- The options and means for the data owner to limit the use or disclosure of his/her data;
- The means for exercising the rights granted by the LPD of access, rectification, cancellation and/or objection (beginning on January 6, 2012);
- Whether data will be transferred; and
- The process and means by which the entity collecting the data will notify the data owner of any changes to the Privacy Notice.

In the case of Sensitive Personal Data, the Privacy Notice must expressly state that it is dealing with this type of data.

Sanctions

Lack of compliance with or violations of the LPD includes fines ranging from US \$500 to US \$1,600,000 per violation, and/or imprisonment for up to five years. In the case of Sensitive Personal Data or reoccurrence, sanctions are doubled.

Electronic Invoicing in Mexico Now Mandatory

Companies operating in Mexico need to be aware that invoices (factura), and how they are presented, can have an effect on their business in Mexico, particularly with Mexican tax authorities. Until now, Mexican companies only had to concern themselves with paper invoices, which are subject to special rules on where and by whom they can be printed. On January 1, 2011, Mexico began requiring companies to integrate with the Mexico Tax Authority (SAT) for real-time issuance and approval of electronic invoices.

The new electronic invoice in Mexico is a digital tax receipt called a "Comprobante Fiscal Digital" (CFDI) or "factura electrónica" that documents and confirms the performance of a business transaction in accordance with the standards defined by the SAT in Annex 20 of the Miscellaneous Tax Resolution, and which can be generated, transmitted and protected by electronic means.

Effective immediately, all invoices in Mexico must be electronic. Paper invoices printed before January 1, 2011, by an authorized printer may continue to be used until the expiration date established on the invoice (normally two years). Where required, new paper invoices need to be bar-coded (Código de Barras Bidimensional or CBB). This transition process does not apply to companies with an annual income of more than \$4 million Pesos (approx. U.S. \$325,000); with few exceptions, these must immediately begin using only electronic invoices.

There are a number of specific requirements on the issuance of electronic invoices, which vary by size of company. Below are the most important distinctions:

CLASSIFICATION	ELECTRONIC INVOICE	
	Printed Bi-Dimensional Bar-Coded (CBB) Version	Electronic (CFDI) Version
Annual Income*		
More than \$4M Pesos (US \$325K)	Only for transactions of \$2,000 Pesos or less, before taxes (approx. US \$162)	✓
\$4M Pesos or less (US \$325K)	✓	Optional

* Accumulated income on the prior tax declaration or based on estimates on current tax year.

There are multiple purposes and benefits of the new electronic invoicing. One is to achieve savings in the cost of issuing

factura by eliminating the requirement to have them printed on special stationery only by certain licensed printers. The electronic invoicing process also will streamline administration, including shipping and receiving. It is also anticipated that the electronic invoices will help reduce the risk of fraud since the documents will be subject to certain security measures (discussed below). Electronic invoices establish a means to immediately verify the identity and tax eligibility of the person signing the electronic invoice. The process of issuing an electronic invoice requires a few new steps, which verify the authenticity of the invoice.

In order to be able to issue electronic invoices, each Mexican company must do the following:

- Obtain a federal registration for taxpayers (Registro Federal de Contribuyentes or RFC) and register with SAT to issue electronic invoices.
- Obtain an Electronic Signature (Firma Electrónica Avanzada or FIEL) from SAT.
- Obtain a Certificate of Digital Stamp (Certificado de Sello Digital or CSD) from SAT.
- Use an Authorized Certification Provider (Proveedor Autorizado de Certificación or PAC) for the validation, folio and digital stamp.

Companies issuing electronic invoices must keep track of the invoices issued, by storage or backup of digital vouchers, so as to have on hand any clarification required by SAT in the future.

The sanctions for taxpayers that issue or use electronic invoices that do not comply with the regulations will be the same than the sanctions for tax fraud, i.e., six months to 9 years imprisonment, depending on the amount involved.

New Export Control Law for Mexico

In order to comply with its obligations under UN Resolutions 64/40 and 1540, on June 16, 2011 the Mexican Secretary of Economy issued an Accord establishing a system of export controls for arms, parts, and dual-use goods, software, technology and goods that could be used in the manufacture and proliferation of conventional weapons and weapons of mass destruction. In addition, Mexico also requested accession to the Wassenaar Arrangement, one of the most important international regimes on export control for conventional arms and dual-use goods and technologies. The Accord went into force on October 21, 2011.



The new Accord follows some concepts under the U.S. export control regime.

Under the Accord, the following items listed on the Accord's annexes require an export permit from the Secretary of Economy before they may be exported:

- Dual-use goods listed on Annex I
- Conventional arms, parts and components listed on Annex II
- Software and technology listed on Annex III

Dual-use

"Dual-use" is defined broadly to include **any product**, regardless of how small or innocuous, **that could be incorporated in both military and civil products or put to military use**. Examples include computers and software, drawings, bearings, electric/integrated circuits and cellular phones having a potential for dual use. Thus all dual-use software, technology and goods leaving Mexico, including by electronic means, are considered "exported" and, therefore may be subject to obtaining an export permit from the Secretary of Economy prior to their export.

Exemptions from Export Permit Requirement

The following persons and transactions are exempt from obtaining an export permit:

- The Mexican Government
- If the final customer is located in the U.S., Canada, or a member state with similar export controls
- Any other entity or person exempted by the Secretary of the Economy

Obtaining an Export Permit

In order to obtain an export permit, the exporter must submit to the Secretary of the Economy a "Declaration of Final Use" that must contain the following information:

- Exporter's name and address
- Foreign importer's name and address
- Industry or business activity of foreign importer
- Description of goods to be exported
- Description of the operations or activities related to end use of the goods to be exported

The export permit will be valid for one year, which can be

extended for one more year as long as the circumstances remain the same. The Secretary of the Economy may refuse or cancel the exporter's authorization if the above requirements are not met, if false information is presented, if the exporter cannot provide sufficient evidence of accurate export controls or if the Secretary of the Economy knows or suspects involvement by the exporter activities controlled by the Accord.

How Can My Company Be Affected?

The Accord contains three annexes listing the specific goods and tariff codes of the goods that are subject to the export permit requirement. These lists will be reviewed and updated at least once a year. There are nine categories of dual-use goods in Annex I, which are comprised of the following broad categories:

- Special Materials and Related Equipment
- Material Processing
- Electronics
- Computing
- Part I Telecommunications
- Part II Information Security
- Sensors and Lasers
- Navigation and Avionics
- Marine
- Aerospace and Propulsion

The Accord contains a fourth annex. Annex IV is a list of exempted destination countries. This annex has no listings at present.

The main industries affected by the new export controls are:

- Aerospace
- Aeronautic
- Electronic and electric components
- Machinery and equipment
- Nanotechnology
- Robotics
- Software



Sanctions for Non-Compliance

Failure to comply with the Accord will be sanctioned according to the Foreign Trade, the Customs and/or any other applicable regulations, and may include tax and criminal penalties.

Companies doing business in Mexico need to carefully evaluate both the products listed as requiring an export permit and also whether the ultimate customer is located in one of those countries that is exempt from the export permit requirement.

Miller Canfield's Mexico practice team provides efficient and strategic cross-border legal, business and tax services to global manufacturers and other enterprises with operations in Mexico. We would be pleased to provide additional information or answer any questions you may have. Please contact:

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