

Washington International Law Journal

Volume 27 | Number 3

6-1-2018

The *Sciedad por Acciones Simplificada*: Suggestions for Further Reform of Mexico's First Unipersonal Limited Liability Entity

Laura K. Daugherty

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wilj>



Part of the [Business Organizations Law Commons](#), and the [Comparative and Foreign Law Commons](#)

Recommended Citation

Laura K. Daugherty, Comment, *The Sciedad por Acciones Simplificada: Suggestions for Further Reform of Mexico's First Unipersonal Limited Liability Entity*, 27 Wash. L. Rev. 743 (2018).

Available at: <https://digitalcommons.law.uw.edu/wilj/vol27/iss3/7>

This Comment is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington International Law Journal by an authorized editor of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

THE *SOCIEDAD POR ACCIONES SIMPLIFICADA*: SUGGESTIONS FOR FURTHER REFORM OF MEXICO'S FIRST UNIPERSONAL LIMITED LIABILITY ENTITY

Laura K. Daugherty[†]

Abstract: Mexico introduced its first unipersonal limited liability entity in 2016, the *Sociedad por Acciones Simplificada* (“SAS”).¹ The introduction of Mexico’s SAS is in line with legal development in Latin America as a whole, where there has been a recent trend towards introducing new unipersonal limited liability entities that are specially designed to reduce barriers to entry for burgeoning business owners and ease the requirements of owning a business entity. However, the Mexican SAS as it currently exists is uniquely overly restrictive. To remedy this, some of the current restrictions on the entity should be lifted to facilitate the functionality of the entity. Particularly considered for further reform are the five-million-peso total annual income cap, bar on SAS entities having juridical person shareholders, and bar on SAS entities having shareholders who are controlling shareholders in another Mexican entity. The excessive restrictiveness of the Mexican SAS entity is illustrated from three perspectives: legislative intent, rule of law, and comparative law.

Cite as: Laura K. Daugherty, *The Sociedad por Acciones Simplificada: Suggestions for Further Reform of Mexico’s First Unipersonal Limited Liability Entity*, 27 WASH. INT’L L.J. 743 (2018).

I. INTRODUCTION

The *Ley General de Sociedades Mercantiles*, or General Law for Commercial Corporations (“LGSM”),² is the legal code that governs the types of juridical entity structures available in Mexico. In March 2016, Mexico reformed the LGSM to include the *Sociedad por Acciones Simplificada*, or

[†] *Juris Doctor*, University of Washington School of Law and Fulbright-García Robles Binational Business Fellow 2016–2017. The author would like to thank Gil Gil Valle, Master of Laws, for his instrumental help in beginning this project, instructing the author on how to start thinking about this issue in the Mexican context, and showing her where to find pertinent Mexican sources. The author would also like to thank María José Pérez, attorney at law, for her help in reviewing the statute translation and Comment draft and for providing insight from her real-world experience practicing in the start-up context in Mexico. Additionally, the author would like to thank Ernesto Mier, attorney at law, for his kind words in reviewing the draft. The author would also like to thank Professor M.J. Durkee, who has encouraged the author throughout her law school career, and whose review of this piece was particularly useful in putting together a cohesive product. Finally, many thanks to the staff of the *Washington International Law Journal* for its help in editing and publishing this piece.

¹ The author notes that this Comment regularly cites directly from Spanish-language sources without providing indication that the quotation is a translation. All translations (and errors) are by the author.

² *Ley General de Sociedades Mercantiles* [LGSM], cap. XIV, Diario Oficial de la Federación [DOF], 04-08-1934, últimas reformas DOF 24-01-2018 (Mex.), formato PDF, http://www.diputados.gob.mx/LeyesBiblio/pdf/144_240118.pdf (last visited Apr. 21, 2018).

simplified joint stock company (“SAS”).³ The SAS is a type of unipersonal⁴ limited liability business entity intended to allow owners and operators to insulate themselves from personal liability from their business investment.⁵ Unlike other Mexican business entities, the SAS does not automatically dissolve when owned by only one shareholder, but rather can be formed and perpetually owned by a single individual.⁶

The Mexican SAS is an example of the development of unipersonal entities in the civil law tradition, particularly the Latin American civil law tradition. Such unipersonal limited liability entities are currently in vogue in the region, as they have been introduced by multiple other Latin American countries and encouraged by international organizations. The SAS is, at its core, an entity designed for use by startups. In order to limit the SAS to this group, the SAS is subject to many unique restrictions. In Mexico, the SAS has proved controversial, with detractors arguing that the entity is risky and regressive, while proponents argue that it eliminates bureaucratic hurdles to foster entrepreneurial innovation. In all, the SAS is the latest innovation in Latin American business entity law, and its unique position as a startup entity can both support its existence and fuel its critics.

While the SAS represents a great step forward in the modernization of Mexican commercial law, with further reform the SAS could do more to aid its principle goal of stimulating the Mexican economy through buoying new business owners. Such reform would be consistent with the design of unipersonal entities in other Latin American countries. This Comment looks to legislative intent, rule of law theory, and a comparative analysis with a selection of similarly situated Latin American countries to make a multifaceted case for such further reform. Primarily, an important goal of the SAS is to foster economic growth in Mexico. The Mexican SAS may better foster economic growth if some of the unique restrictions currently imposed on the entity were loosened or eliminated. Additionally, the current law necessitates reform because it lacks clarity and therefore may be difficult for

³ Translated from “sociedad por acciones simplificada.” *Id.* art. 1, frac. VII. For the original SAS reform, see Decreto por el que se reforman y adicionan diversas disposiciones de la Ley General de Sociedades Mercantiles, DOF 14-3-2016.

⁴ A “unipersonal” entity is one that a sole shareholder can own, although there may be additional shareholders. This Comment uses “unipersonal” to refer both to entities that can be formed by a sole shareholder and those that must be formed by multiple shareholders, but do not dissolve or lose limited liability protection upon a reduction to one shareholder.

⁵ See LGSM cap. XIV.

⁶ *Id.* art. 260.

some targeted business owners to follow. Finally, such reform would not be unprecedented, as looking to other similarly situated Latin American countries shows that the restrictions in question are in fact unique to the Mexican SAS. Mexican SAS reform should look to the models of other Latin American countries, as these jurisdictions may offer hints for how Mexico can preserve a true startup entity form without hampering growth for businesses that choose to form as an SAS. Principally, Mexico should consider removing unique restrictions such as the income cap currently imposed on an SAS entity and loosening restrictions on who may be an SAS shareholder.

There is limited English-language scholarship available on the development of the SAS and related limited liability business entities in Latin America, and even less in the Mexican context. This Comment seeks to bring the conversation surrounding the Mexican SAS entity into English-language scholarship. Knowledge of the capabilities and limitations of this entity type may be useful for those who wish to do business in Mexico. Additionally, this Comment hopes to interact with ongoing debates within Latin America about how to structure new unipersonal entities and stimulate startups. Finally, the themes presented here regarding thoughtful proliferation of new entity forms and regulation of startup businesses, though analyzed in the Latin American context, are applicable to law reform efforts worldwide.

As the first Mexican limited liability entity that can be owned by a single shareholder, the SAS is a step in the right direction. However, Mexico should loosen its restrictions on the entity in order to create a more economically useful and enduring entity structure. In support of this claim, Part II provides background on the historical development of unipersonal limited liability entities in Latin America, explains what is unique about the SAS, and outlines Mexican perspectives on the introduction of the SAS entity—both in favor and against. Part III analyzes the legislative intent behind the SAS implementation to illustrate that it would be better served by a less restrictive structure, provides theoretical arguments against the restrictive nature of the Mexican SAS from the perspective of rule of law theory, and demonstrates the restrictiveness of the Mexican SAS when compared to other similarly situated Latin American countries. Part IV concludes by providing thoughts on how Mexico may further reform its commercial law in this context.

II. BACKGROUND

The Mexican SAS entity did not materialize from thin air. Long before the introduction of the Mexican SAS, unipersonal limited liability entities entered and developed in the civil law tradition. While the SAS is unique to Mexico, it arises from this same legal school. However, despite the heritage of unipersonal limited liability entities in the Latin American civil law tradition, the Mexican SAS has been met with both praise and critique. This Part grounds the SAS to Mexico by providing context surrounding: 1) the development of unipersonal limited liability entities in the Latin American civil law tradition; 2) what exactly is unique about the SAS in the Mexican context; and 3) how Mexican commentators and stakeholders have reacted to the introduction of the SAS entity.

A. *Development of Unipersonal Limited Liability Entities in the Latin American Civil Law Tradition*

The proliferation of SAS-type entities in Latin America can be seen as the most recent event in a chain of developments originating from the civil law tradition. Limited liability theory came to Latin America through the Western European continental civil law tradition.⁷ While there were some exceptions,⁸ shareholder liability was generally unlimited in continental Europe until the time of the French Revolution. In the 1780s, many French companies began including limited liability clauses in their charters, and in 1807 the French Commercial Code was modified to provide limited liability for joint stock companies. The French codification of limited liability followed Napoleon—notably into the Spanish Civil Code of 1829 and from Spain to Latin America.⁹

While limited liability entities were recognized in the civil law tradition in the nineteenth century, unipersonal limited liability entities did not come about until later. The first country to allow for unipersonal limited liability

⁷ Dante Figueroa, *Comparative Aspects of Piercing the Corporate Veil in the United States and Latin America*, 50 DUQ. L. REV. 683, 699 (2012).

⁸ Notably, the French East India Company, which was founded in 1664. *Id.* at 699.

⁹ *Id.* at 699–700.

entities was Liechtenstein in 1925,¹⁰ and the first country in Latin America to do so was Costa Rica in 1961.¹¹

Currently, Latin America is in the midst of a new wave of limited liability law reform. The introduction of unipersonal limited liability entities was intended to make these entities more accessible to new business owners through reduced barriers to entry¹² and simplification of corporate formalities, among other aspects.¹³ These new entities have been described as a blend of the civil law tradition that predominates in Latin America and the common law tradition. Rather than adhering strictly to established positive standards for corporate entities, as is the norm in Latin American civil law jurisdictions, such entities provide flexible solutions reflecting the “economic needs of common business people.”¹⁴ This law reform movement comes as part of a recent trend in Latin America to simplify company legislation in pursuit of economic prosperity. In contrast, the previous norm in the region was to have the same types of legal structure and incorporation processes available for all types of businesses, “regardless of the business’ size or stage of development.”¹⁵ In sum, while it is a departure from the historical Latin American norm, decreasing rigidity is intended to increase the accessibility of entity formation in order to encourage formal formation of businesses that otherwise may not have registered or existed.

Such legal reform efforts have been encouraged by international organizations. The Organization of American States (“OAS”) adopted a Model Law on Simplified Corporations in June 2017,¹⁶ and the United

¹⁰ Aramouni, Alberto, “Empresa Individual de Responsabilidad Limitada,” *Revista de Derecho Privado [RDP]*, vol. 8, 1992, p. 196, formato PDF, <https://revistas-colaboracion.juridicas.unam.mx/index.php/rev-derecho-privado/article/view/20088/18021> (last visited Apr. 21, 2018).

¹¹ See CÓDIGO DE COMERCIO [CÓD. COM.] [COMMERCIAL CODE] tit. I, cap. VII (Costa Rica), <https://costarica.eregulations.org/media/codigo%20de%20comercio.pdf> (providing amendment dates indicating the duration of the law) [hereinafter Cód. Com. (Costa Rica)]. Note that the ability of a *Sociedad Anónima* to survive as a unipersonal entity and the *Empresa Individual de Responsabilidad Limitada* unipersonal entity structure are both included in the original version of the law. *Id.*

¹² Via features such as online registration systems and reduced minimum capital and registration costs. See *infra* Table 1.

¹³ See Francisco Reyes, *The Colombian Simplified Corporation: A Proposed Model for Developing Jurisdictions*, 33 *ARIZ. J. INT’L & COMP. L.* 113, 114 (2016).

¹⁴ *Id.*

¹⁵ Rodrigo Novoa Urenda, *The Latin American Contribution to a Model Law of Simplified Companies*, 33 *ARIZ. J. INT’L & COMP. L.* 167, 167 (2015).

¹⁶ Org. of Am. States [OAS], General Assembly Res. 2906 (XLVII-O/17), annex, *Model Act on the Simplified Stock Corporation* (June 20, 2017), http://www.oas.org/en/sla/dil/docs/Model_Law_on_the_Simplified_Corporation.pdf; see also Francisco Reyes Villamizar, *The Organization of American States’ Model Law on Simplified Corporations*, *OXFORD BUS. L. BLOG* (Sept. 11, 2017), <https://www.law.ox.ac.uk/business-law-blog/blog/2017/09/organization-american-states-model-law-simplified-corporations> (noting

Nations Commission on International Trade Law (“UNCITRAL”) Working Group on Micro-, Small-, and Medium-sized Enterprises is likewise developing model laws on simplified and single-member business entities and legislative guides on key principles of a business registry and limited liability organizations.¹⁷

As of writing, such simplified and easily accessible entities have been adopted in four Latin American countries¹⁸: Chile, adopting its *Sociedad por Acciones* (joint stock company) (“Chilean SpA”) in 2007;¹⁹ Colombia, adopting its *Sociedad por Acciones Simplificada* (simplified joint stock company) (“Colombian SAS”) in 2008;²⁰ Mexico, adopting its *Sociedad por Acciones Simplificada* (simplified joint stock company) in 2015;²¹ and Argentina, adopting its *Sociedad por Acciones Simplificada* (simplified joint stock company) (“Argentine SAS”) in 2017.²² Brazil also has a bill that has been pending since 2012 to create a *Sociedade Anônima Simplificada*, or simplified joint stock company (“Brazilian SAS”).²³ Therefore, while the Mexican SAS is unique in many ways, Mexico is not alone in its current law reform efforts. In fact, it is one of many Latin American countries embracing the idea that providing an accessible startup entity type, though a departure from the Latin American legal tradition, may prove beneficial to economic development.

that the OAS’s Model Law is based on the Colombian *Sociedad de Acciones Simplificada*, which has been very successful); OAS, Inter-Am. Judicial Comm. Res 188 (LXXX-O/12) corr.1, *Project For A Model Act On Simplified Corporation* (Mar. 9, 2012), http://www.oas.org/en/sla/dil/docs/CJI-doc_380-11_corr2.pdf (approving the OAS project to develop the model law in 2012); *Model Law on the Simplified Stock Corporation*, OAS DEP’T INT’L L.: NEWSLETTER (July 2017), http://www.oas.org/en/sla/dil/newsletter_Model_Law_Simplified_Corporation_Report_Jul-2017.html (describing the Model Law).

¹⁷ See generally *Working Group I: 2014 to Present: Micro, Small and Medium-sized Enterprises*, U.N. COMMISSION ON INT’L TRADE L. [UNCITRAL], http://www.uncitral.org/uncitral/en/commission/working_groups/1MSME.html (last visited Mar. 30, 2018) (listing all of the records of the working group).

¹⁸ Reyes Villamizar, *supra* note 16 (providing an overview of the legal developments in Latin America as well as the OAS Model Law).

¹⁹ Law No. 20190, *Introduce Adecuaciones Tributarias e Institucionales para el Fomento de la Industria de Capital de Riesgo y Continúa el Proceso de Modernización del Mercado de Capitales*, Junio 5, 2007, DIARIO OFICIAL [D.O.] (Chile), <https://www.bcn.cl/leychile/N?i=261427&f=2007-06-05> [hereinafter Law No. 20190 Chile].

²⁰ L. 1258, diciembre 5, 2008, [No. 47.194] *Diario Oficial [D.O.] (Colom.)*, http://www.secretariasenado.gov.co/senado/basedoc/ley_1258_2008.html.

²¹ LGSM cap. XIV.

²² Law No. 27349, Mar. 29, 2017, [33604] B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=273567> [hereinafter Ley 27349 Argentina].

²³ For a Brazilian government website showing the bill’s progress, see *Projetos de Lei e Outras Proposições: PL 4303/2012*, CÂMARA DOS DEPUTADOS, <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=553029> (last visited Mar. 30, 2018) (“*Altera a Lei no. 6.404, de 15 de dezembro de 1976, para criar e disciplinar a sociedade anônima simplificada (SAS).*”).

B. An Overview: What Is the SAS?

The Mexican SAS is essentially a reworking of traditional Mexican entity forms intended to make it easier for new business owners to form and run a business while still fitting into the overarching Mexican commercial legal framework. The key ways that the SAS is unique within Mexican law are that it is the only Mexican limited liability commercial entity that can be owned by a single shareholder;²⁴ it can be incorporated in a single day via an online system;²⁵ its formation does not require the services of a public notary;²⁶ and there is no requirement to set aside a legal reserve from the annual net profits.²⁷

The statement of legislative intent backing the new law explains that the goal of the SAS is to facilitate the creation of new businesses in Mexico—without sacrificing legal security—in order to foster job creation, healthy economic growth, and market competitiveness through new and better services and market prices, which in turn are to produce economic and societal stability.²⁸ The legal reform is targeted at youths and entrepreneurs who seek to start a business but are challenged by the excessive and inhibitive legal complexity of forming a business in Mexico.²⁹ Likewise, the law addresses

²⁴ LGSM art. 260.

²⁵ *Id.* art. 262, frac. II. For the statement of intent or “Exposición de Motivos” of the SAS law, see *Iniciativa con Proyecto de Decreto por el que Se Reforman y Adicionan Diversas Disposiciones de la Ley General de Sociedades Mercantiles, del Código de Comercio, y del Código Fiscal de la Federación*, 9 de diciembre de 2014, *in* *Decreto por el que Se Reforman y Adicionan Diversas Disposiciones de la Ley General de Sociedades Mercantiles*, pt. 1, p. 2, DOF 14-03-2016, formato PDF, http://www.diputados.gob.mx/sedia/biblio/prog_leg/Prog_leg_LXIII/031_DOE_14mar16.pdf (last visited Apr. 21, 2018) [hereinafter *Exposición de Motivos*]; see also *¿Qué es una Sociedad por Acciones Simplificada—SAS?*, GOB.MX: TU EMPRESA BLOG, (Jan. 21, 2017), <https://www.gob.mx/tuempresa/articulos/que-es-una-sas>.

²⁶ See LGSM art. 263, frac. VI; *Exposición de Motivos*, *supra* note 25, at 2.

²⁷ In Mexico, all business entities, except for the SAS, must annually set aside five percent of their net profits as a legal reserve until the reserve fund is equal to twenty percent of the share capital of the organization, after which the reserve must be maintained at twenty percent. See LGSM art. 20.

²⁸ *Exposición de Motivos*, *supra* note 25, at 1–2.

²⁹ While this will be touched on throughout, such inhibitive requirements include, for example, the necessity of using a notary public to form a company; the cost of forming a company, which may be prohibitive to many would-be entrepreneurs in Mexico; the time required to form a company through a notary public; strict corporate governance norms that may be difficult for small companies to comply with; and the necessity of setting aside a “legal reserve” up to twenty percent of the share capital of the organization. See generally LGSM (providing the regulations governing commercial entity forms available in Mexico and throughout requiring the types of restrictions outlined here); see also *Ease of Doing Business in Mexico*, DOING BUS., <http://www.doingbusiness.org/data/exploreconomies/mexico#starting-a-business#mexico-city> (last visited Apr. 21, 2018) (quoting an incorporation time in Mexico City for a *Sociedad Anónima*, a standard Mexican entity type, at 8.5 days and noting that the costs of incorporation would be about 18.2% of the standard income per capita).

Mexico's unregistered informal economy³⁰—people who may be experienced business owners, but who have not gone through formal business formation procedures.³¹ The law is intended to create an alternative to traditional entity types and formation procedures available only to entry-level businesses and businesspeople where the costs of a public notary and the time needed for administrative procedures are not merited.³² In this sense, the law can be seen as a transitory entity for businesses to use only in the beginning phases of their operation.³³

As a unique entity, the SAS carries unique restrictions. Only natural persons can be shareholders in SAS entities,³⁴ which means that the SAS cannot have any corporate shareholders, let alone sell shares to a venture capital firm for startup funding or serve as a subsidiary. Perhaps more stringently, the natural person shareholders of a SAS cannot be controlling shareholders of any other Mexican legal entity.³⁵ So, an entrepreneur could not maintain more than one SAS for different businesses. Additionally, SAS entities are capped at a total annual income of \$5 million MXN (approximately \$250,000 USD),³⁶ after which they must either transform into a different entity structure—all of which require more than one shareholder—or lose their limited liability protection.³⁷ The reference in the statute to “total annual income” does not specify whether this refers to gross income, net income, income before taxes, or income after taxes.³⁸

³⁰ Exposición de Motivos, *supra* note 25, at 1.

³¹ In Mexico, there is a large sector particularly consisting of micro and small businesses that is commonly known as the “informal economy.” This term refers to businesses that are not officially formed or registered and that generally do not pay taxes. It is also known as the “shadow economy.” A common example is many of Mexico's prolific street vendors. *See* Sergio Peña, *Informal Markets: Street Vendors in Mexico City*, 23 HABITAT INT'L 363, 365–67 (1999) (explaining generally what the informal economy is in the context of street vendors in Mexico City); Krista Hughes, *Mexico Aims to Bring Shadow Economy into the Light*, REUTERS (June 26, 2013), <https://www.reuters.com/article/us-mexico-economy-informal/mexico-aims-to-bring-shadow-economy-into-the-light-idUSBRE95P09C20130626> (discussing the tax problems associated with Mexico's informal economy). While not discussed in depth here, the SAS entity's efficacy in actually registering the informal economy is an interesting question ripe for further study.

³² Exposición de Motivos, *supra* note 25, at 2.

³³ *See* Discusión del Dictamen de las Comisiones Unidas de Comercio y Fomento Industrial, de Hacienda y Crédito Público, y de Estudios Legislativos, Segunda, con Proyecto de Decreto por el que Se Reforman y Adicionan Diversas Disposiciones de la Ley General de Sociedades Mercantiles, del Código de Comercio, y del Código Fiscal de la Federación, 09 de diciembre de 2015, *in* Decreto por el que Se Reforman y Adicionan Diversas Disposiciones de la Ley General de Sociedades Mercantiles, *supra* note 25, pt. 3 [hereinafter Discusión del Dictamen].

³⁴ LGSM art. 260.

³⁵ *Id.*

³⁶ To be adjusted annually by regulation. *Id.*

³⁷ *Id.*

³⁸ *Id.*

Despite these restrictions, the uniquely simple and flexible SAS has been gaining traction in Mexico. The Mexican Subsecretary of Normativity and Competitiveness of the Secretary of Economy reported that 7894 SAS entities were formed online between October 2016 and October 2017, the first year of SAS operation. The Subsecretary further reported that the numbers have evened off, with about 1000 SAS entities registering every month.³⁹ While the SAS may be heavily restricted, its creation was certainly not a legislative error, as it already shows promising patterns of use by Mexican business owners.

C. *Mexican Perspectives on the SAS*

The SAS is not without controversy in Mexico. While politically popular, SAS introduction has sparked everything from accolades to warnings of doom from commentators and stakeholders. This section presents the legislative record of the SAS and arguments against introducing the SAS. Arguments against the SAS mainly focus on it being too liberal (rather than too restrictive), while arguments in favor are mainly from the entrepreneurial perspective.

The legal reform that created the SAS was politically very popular in Mexico. The bill passed in the Chamber of Senators with seventy-one votes in favor, two votes against, and two abstentions. The bill likewise passed by high margins in the Chamber of Representatives,⁴⁰ with 428 votes in favor, one against, and no abstentions.⁴¹ However, there was still popular controversy over the bill and arguments both for and against the bill presented in the Mexican media.⁴² The two most vocal groups for and against the

³⁹ Ivette Saldaña, *En Primer Año de Empresas Exprés, Se Crean 7 Mil 894*, EL UNIVERSAL (Apr. 12, 2017), <http://www.eluniversal.com.mx/cartera/economia/en-primer-ano-de-empresas-expres-se-crean-7-mil-894>.

⁴⁰ In Mexico, both chambers of Congress—the Chamber of Senators and the Chamber of Representatives—must agree on the text of a bill for it to become law. See *National Parliaments: Mexico*, LIBR. CONGRESS, <https://www.loc.gov/law/help/national-parliaments/mexico.php> (last updated Feb. 16, 2016).

⁴¹ Decreto por el que Se Reforman y Adicionan Diversas Disposiciones de la Ley General de Sociedades Mercantiles, *supra* note 25, at 1.

⁴² See, e.g., Raúl Contreras Bustamante, *Sociedades por Acciones Simplificadas*, EXCELSIOR (Mar. 19, 2016), <http://www.excelsior.com.mx/opinion/raul-contreras-bustamante/2016/03/19/1081829> (against the bill); *Analiza Comisión de Comercio creación de la Sociedad por Acciones Simplificada*, SENADO DE LA REPÚBLICA, (Nov. 26, 2015, 7:38 PM), <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/25039-2015-11-27-01-40-47.html> [hereinafter *Analiza Comisión de Comercio*] (for the bill); Xanath Lastiri, *La Nueva Ley para Crear Empresas Pymes Guarda Riesgos para Ciudadanos, Critican Notarios*, SIN EMBARGO (Feb. 11, 2016, 12:02 AM), <http://www.sinembargo.mx/11-02-2016/1617823> (against the bill); Laura Adriana Esparza García, *Comentarios Jurídicos Sobre las Sociedades por Acciones*

introduction of the SAS entity in Mexico were the *Colegio Nacional del Notariado Mexicano* (National College of Mexican Notaries) (“Notaries”) and the *Asociación de Emprendedores de México* (Mexican Association of Entrepreneurs) (“ASEM”).

The Notaries’ argument against the introduction of the SAS focused on two main concepts: that the SAS was risky and that it was regressive. The Notaries gave four reasons why the SAS was risky. First, forming an SAS does not require any sort of identity corroboration in the moment of formation and depends only on presentation of an electronic signature to open the business.⁴³ While people must go in person to the office of the *Servicios de Administración Tributaria* (Tax Administration Service) to obtain an electronic signature, once it has been obtained, it is located on a portable data storage device, such as a flash drive. From that device, the signature could arguably be easily misappropriated.⁴⁴ One journalist noted that this was a particular risk in Mexico, as Mexico has the third-highest rate of cybercrime in the world in terms of number of victims, with sixty-eight percent of such crimes being identity theft.⁴⁵ The ability to use an electronic signature without additional verification also means that SAS entities could arguably be formed using nonexistent partners, dead partners, and partners without continuing legal capacity to consent.⁴⁶ Second, the SAS law does not include any official mechanism for people to challenge that they gave consent to open a business in their name.⁴⁷ Hypothetically, if someone’s identity were to be stolen and

Simplificadas, BCS ABOGADOS (May 19, 2016), <http://bcsabogados.com/comentarios-juridicos-sobre-las-sociedades-anonimas-simplificadas/> (both for and against the bill); Laura Vela, ‘Empresas en un Día y Costo Cero’, *¿En Verdad Beneficiaría a México?*, DINERO EN IMAGEN (Jan. 20, 2016), <http://www.dineroenimagen.com/2016-01-20/67542> (both for and against the bill); Angélica Pineda, *SAS Abren Puerta a Empresas Fantasmas, Advierten Notarios*, EL EMPRESARIO (Jan. 20, 2016), <http://elempresario.mx/actualidad/sas-abren-puerta-empresas-fantasmas-advierten-notarios> (both for and against the bill); Campus Mexicali, *Explica Experta ‘Sociedades por Acciones Simplificada,’* VOCETYS (Apr. 29, 2016), <http://www.cetys.mx/noticias/explica-experta-sociedades-por-acciones-simplificada/> (against the bill); Héctor Galeano Inclán, *4 Riesgos que Entraña Crear la Sociedad por Acciones Simplificada*, FORBES (Mex.) (Feb. 2, 2016, 4:30 PM), <https://www.forbes.com.mx/4-riesgos-que-entraña-crear-la-sociedad-por-acciones-simplificada/> (against the bill); Comisión Fiscal del Colegio de Contadores Públicos Universidad de Guadalajara, A.C., “Sociedad por Acciones Simplificada,” *Fiscool Informativo*, abril 2016, p. 5, formato PDF, <http://www.ccpudg.org.mx/wp-content/uploads/4-FISCOOL-ABRIL-2016-Sociedad-por-Acciones-Simplificada.pdf> [hereinafter *Fiscool Informativo*] (for the bill).

⁴³ *El CNNM Presenta en Conferencia de Prensa su Postura ante la Creación de las Sociedades por Acciones Simplificada*, COLEGIO NACIONAL DEL NOTARIADO MEXICANO, http://notariadomexicano.org.mx/eventos/postura_ante_sociedad_acciones_simplificada.html (last visited Apr. 21, 2018) [hereinafter NOTARIADO MEXICANO].

⁴⁴ Lastiri, *supra* note 42.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ NOTARIADO MEXICANO, *supra* note 43.

used to open an SAS online, the identity theft victim would have no official channel for recourse. Third, as an SAS can be registered online without the traditional formalities required to open a business in Mexico, it creates a blinder potentially utilizable by those who wish to operate illicit businesses and commit crimes—particularly money laundering.⁴⁸ Finally and similarly, the Notaries argued that the SAS was vulnerable to being taken advantage of by people who wished to form phantom and fraudulent businesses.⁴⁹

The Notaries also provided three arguments why the SAS law was regressive. First, they argued that SAS registration was not truly free, but rather that the cost of registration is redistributed to all Mexican citizens instead of only those who actually wished to open a business.⁵⁰ Second, all of the features of the SAS program were intended to help only one type of business owner rather than provide services for all types of business entities.⁵¹ Lastly, and perhaps predictably from a notary professional organization, they argued that not using a professional notary in the course of entity formation increases the chances of making errors, which in turn can be costly to remedy after the fact.⁵² While the Notaries couched their arguments as claiming the SAS was regressive, in reality, many of their arguments were focused on maintaining the status quo, and with it the indispensability of notaries in the Mexican business-formation system.⁵³

Journalists and other commentators also made additional arguments against the SAS entity. For example, one journalist commented that the SAS was not inherently Mexican, as it was from the Anglo-Saxon legal tradition rather than the Roman-Germanic tradition of Mexico.⁵⁴ The same journalist also opined that the utilization of an SAS could lead to conflicts between shareholders, lack of protection for entrepreneurial investment, lack of transparency in the administration of the company, violations of freedom of

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ While some of the arguments put forward by the Notaries require inference into how exactly the SAS would lead to these results, the Notaries did not flesh this out. In the spirit of reflecting Mexican perspectives rather than her own ideas, the author has not attempted to explain potential inferences.

⁵⁴ Contreras Bustamante, *supra* note 42. This argument is interesting in light of the fact that unipersonal limited liability entities have existed in the continental tradition for almost a century; Mexico is certainly not the first country to adopt this structure. See *supra* Part II.A.

contract, and loss of business opportunities.⁵⁵ Additionally, many journalists argued that, in reality, the SAS entity does micro and small businesses no favors, as the true hurdle for such businesses is not incorporation, but rather surviving in the already highly competitive Mexican marketplace.⁵⁶ Journalists also pointed out that from its inception, the SAS lacked analysis and specialized discussion in designing the reform; rather, it was a popular idea passed without proof that it would function in practice.⁵⁷ From a financial perspective, commentators also noted that because the SAS is exempt from the Mexican accounting requirement called the legal reserve, which requires businesses to set aside five percent of their earnings every year until they hit a twenty percent reserve, investing in such businesses would be risky for creditors.⁵⁸ To the same sentiment, some banking industry players advertised that they were untrusting of SAS companies, and would be unwilling to provide them lines of credit or extend other benefits of the financial system.⁵⁹ Notably, these were not empty threats, as banking issues have materialized for SAS owners.⁶⁰ The sole common argument that the SAS did not go far enough to improve access for startup founders was that, even with the SAS entity, business founders are still required to go through the preexisting channels to secure a business name.⁶¹ The existing process to secure a business name can take from two to four days.⁶²

⁵⁵ Contreras Bustamante, *supra* note 42. However, the journalist did not explain the impetus behind these concerns. Rather, they can be seen to illustrate the general fear of SAS entity introduction by some Mexican commentators.

⁵⁶ *See, e.g.*, Galeano Inclán, *supra* note 42 (noting that 75% of new Mexican businesses close before two years and 90% close before five years); Esparza García, *supra* note 42.

⁵⁷ Contreras Bustamante, *supra* note 42.

⁵⁸ Esparza García, *supra* note 42.

⁵⁹ *Id.*

⁶⁰ Access to banking has become a real problem for entrepreneurs who choose to form SAS entities. Legal representatives of SAS entities have difficulty proving that they are in fact the legal representatives because, unlike in traditional Mexican entities, their legal representative powers are not documented in a public deed. In traditional Mexican entities that are constituted before a notary public, the powers of the legal representative are granted before the notary and are therefore included in a public deed. As SAS entities are not constituted before a notary, this is not the case. When SAS legal representatives wish to open a bank account, the bank may not recognize their power as legal representatives of the entity, and they must then go before a notary to have their powers as legal representatives granted. The notary service costs approximately \$8000 MXN (approx. \$430 USD) and takes five days. While this Comment does not delve into this specific problem, it is one of the major shortcomings of the Mexican SAS legal reform. E-mail from María José Pérez, Assoc. Attorney at Law, Mier Esparza Abogados, S.C., to author (Mar. 23, 2018, 13:33 PST) (on file with author).

⁶¹ Acosta, *supra* note 42.

⁶² *Id.* Despite the critique, this does not appear to be a particularly burdensome restriction. However, this critique may be seen as indicative of the philosophy that SAS should be as minimally restrictive as possible.

The main proponent of the SAS bill was ASEM. ASEM argued that the new law would help eliminate unnecessary bureaucratic processes and high costs for entrepreneurs and that it would promote the foundation of new businesses.⁶³ One figure published by ASEM touted that for every one thousand SAS entities formed, entrepreneurs would save \$15 million MXN (approximately \$800,000 USD) and fifty-five years of bureaucracy.⁶⁴ Overall, ASEM supported and publicized the legal reform as a victory for Mexican entrepreneurs.

Other arguments in favor of the bill include: that the SAS could serve as an incubator for new businesses, as it would be a useful tool for small and medium businesses to incorporate quickly and begin generating money under simpler operating conditions;⁶⁵ the bill met the criteria of the United Nations Commission for International Business Development and Organization of American States guidelines;⁶⁶ in practice many Mexican businesses already had only one “true” shareholder, so there was no reason for the law not to reflect this reality;⁶⁷ introduction of the SAS could help Mexico rise in the World Bank Doing Business Rankings by reducing the time to form a business;⁶⁸ SAS formation avoids unnecessary bureaucratic hurdles;⁶⁹ forming an SAS can save founders up to \$12,000 MXN (approximately \$650 USD) over a traditional entity form;⁷⁰ and the SAS law is a pro-competitive and pro-economic development, among other arguments.⁷¹

Advocates of the SAS offered counterarguments for many of the points raised by the SAS detractors. Generally, the comments of the Notaries were shrugged off as an example of protectionist fear-mongering on the part of notaries who wanted to preserve their profession’s integral position in

⁶³ *¡Entró en Vigor la Ley para Crear Empresas en un Día y Sin Costo!*, ASOCIACIÓN DE EMPRENDEDORES DE MÉXICO (Sept. 15, 2016), <https://asem.mx/entro-en-vigor-la-ley-para-crear-empresas-en-un-dia-y-sin-costo/>.

⁶⁴ *Mexicanos ‘Darán el Grito’ con Constitución de Empresas en 24 Horas*, EXPANSIÓN (Sept. 13, 2016, 7:45 PM), <https://expansion.mx/emprendedores/2016/09/13/mexicanos-daran-el-grito-con-constitucion-de-empresas-en-24-horas>.

⁶⁵ *Analiza Comisión de Comercio*, *supra* note 42 (noting that micro and small businesses account for 74.7% of brute production and 71% of jobs in Mexico, whereas 70% of micro and small businesses close within two years in Mexico).

⁶⁶ *Fiscool Informativo*, *supra* note 42.

⁶⁷ *Esparza García*, *supra* note 42.

⁶⁸ *Fiscool Informativo*, *supra* note 42.

⁶⁹ *Vela*, *supra* note 42.

⁷⁰ *Pineda*, *supra* note 42. Other sources put the cost differential of traditional entity formation higher than \$12,000 MXN. *See, e.g.*, *Lastiri*, *supra* note 42 (noting that producing the corporate charter alone could cost \$10,000–20,000 MXN).

⁷¹ *Esparza García*, *supra* note 42.

business formation.⁷² More particularly, in response to the argument that the SAS could easily be used for illicit purposes, SAS proponents pointed out that many businesses traditionally formed in front of notaries are already used for illicit purposes. On this point, they noted that businesses are still required to get state-level licenses and permits where they are subject to scrutiny. They further argued that even without licenses and permits, when business owners go to open a checking account, for example, there are already procedures in place to prevent money laundering.⁷³ In reality, any risk of using the entity for illicit dealings is not fairly limited to the SAS or as unrestrained as its detractors might illustrate.

At its core, the argument over the Mexican SAS is one between those who wish to preserve the status quo and those who see introduction of a simplified entity as an avenue for economic growth. The vast majority of the arguments against the SAS state that it is too risky and extreme of a change for Mexico. Many of these arguments center on fears that disrupting traditional business entity formation processes could have collateral consequences for business owners, clients, and unassociated third parties by removing too many fail-safes from the entity formation process. On the other hand, the arguments in favor of the SAS entity tout the convenience and accessibility it provides to entrepreneurs as a source of economic growth in Mexico.

In the spirit of the SAS advocates, this Comment takes the position that further change and relaxation could lead to increased business development in Mexico. While certainly a big step for Mexico, Mexico was not the first Latin American country to reexamine traditional entity formation procedures and introduce a SAS-type entity. Bringing the Mexican SAS closer to the models of other similarly situated Latin American countries could foster business creation and further enhance the simplicity of SAS use for the everyday owner. This would, in turn, further the objectives touted by pro-SAS commentators as the goals of the entity. The remainder of this Comment will focus on elucidating these arguments through analysis of legislative intent, application of rule of law theory, and a comparative look at other similarly situated Latin American countries.

⁷² Vela, *supra* note 42.

⁷³ *Analiza Comisión de Comercio*, *supra* note 42.

III. ANALYSIS AND CRITIQUE OF THE MEXICAN SAS

Beyond the frame of the Mexican arguments for and against the SAS, there is a third position calling for a further rollback of SAS regulations. The SAS entity would benefit from a continued relaxation of restrictions because: 1) the SAS law as it stands is inconsistent with the goals emphasized in its legislative intent; 2) as articulated under rule of law theory, the stringency of the current restrictions undermines the clarity and ease of compliance with the SAS law; and 3) comparative analysis with other similarly situated Latin American jurisdictions demonstrates that the Mexican SAS is uniquely restrictive.

A. *Legislative Intent Analysis: Reform of the Mexican SAS Could Further Its Goals of Aiding Economic Development via New Business in Mexico*

Mexican SAS law should be revised to be less restrictive because less restrictive norms would be conducive to the legislative intent behind the introduction of the entity. In Mexico, the *Exposición de Motivos*, or “Statement of [Legislative] Intent,” of a law is not considered a source for legal interpretation, but it is useful for understanding the goals of the legislature in enacting a law.⁷⁴ In this sense, the Statement of Legislative Intent for the Mexican SAS reform bill provides insight into what the law is intended to address.

The Statement of Legislative Intent for the SAS⁷⁵ makes clear that the new law was envisioned to facilitate the creation and formalization of new businesses, particularly for youths, entrepreneurs, and the informal economy.⁷⁶ It does so by simplifying the incorporation process through providing a free, electronic system that can be utilized without the assistance of a public notary,⁷⁷ as the types of basic businesses envisioned should not

⁷⁴ See González Oropeza, Manuel, “La Interpretación Jurídica en México,” *Isonomía: Revista de Teoría y Filosofía del Derecho*, núm. 5, octubre de 1996, pp. 65, 72–73.

⁷⁵ The SAS law was initially envisioned as a modification to the existing variable capital *Sociedad de Responsabilidad Limitada*, but it was ultimately enacted as a new entity type. See *Exposición de Motivos*, *supra* note 25, at 2.

⁷⁶ *Id.* at 1.

⁷⁷ As of July 7, 2017, the electronic system was still in development to add services at the federal, state, and municipal levels, and had cost \$8,280,747.36 MXN (approximately \$440,000 USD). Letter from Andrés Alejandro Pérez Frías, Agogado General de la Secretaría de Economía y Titular de la Unidad de Transparencia, to author (July 9, 2017) (on file with author) (Mexican Secretary of Economy responding to a data transparency request by the author).

require costly and time-consuming expert intervention.⁷⁸ The minutes of legislative discussion on the introduction of the entity also illustrate that it was intended as a transitory entity, fixed as such by the \$5 million MXN income cap. Its transitory entity status is intended to reflect that, on a global level, four out of five start-up businesses fail.⁷⁹

The resulting law does not necessarily reflect these goals. However, making the legislative framework less restrictive could work to further these goals. First, aiding budding microenterprises, while placing burdens on businesses that grow, is not necessarily the best way to foster economic growth in Mexico. Second, the current SAS law serves to delay the burden of costly and administratively difficult traditional business entity formation that requires the inclusion of additional shareholders. This creates a perverse incentive not to grow a small business past the SAS income-cap limit, to lie about SAS incomes, or, in the case of a truly solely-owned company, to find a sham partner to go forward with entity conversion. Third, under creditor-monitoring theory, as defined within, facilitating subsidiary creation and allowing ownership of more than one SAS, which the current SAS law does not permit, minimize creditor-monitoring costs and therefore foster economic growth. Finally, limiting SAS shareholders to natural persons (rather than also allowing juridical persons⁸⁰ as shareholders) may limit the economic growth the law seeks to create because it complicates early funding for start-up businesses.

1. The Income Cap Is Arbitrary and Counterproductive to Economic Growth

While research has shown that lowering the barriers to entry increases business-formation rates in Mexico,⁸¹ the simple creation of additional micro and small businesses is not necessarily the most effective way to foster noticeable economic growth in Mexico. While the growth of such enterprises does serve an important social-inclusion function, Álvaro Rodríguez Arregui posits that it would require adding 273,000 new microenterprises to the Mexican economy to achieve one percentage point growth of the gross

⁷⁸ Exposición de Motivos, *supra* note 25, at 2.

⁷⁹ Discusión del Dictamen, *supra* note 33, at 2.

⁸⁰ “Juridical persons” refers to legal entities, as opposed to natural persons or individuals.

⁸¹ See Miriam Bruhn, *License to Sell: The Effect of Business Registration Reform on Entrepreneurial Activity in Mexico*, 93 REV. ECON. & STAT. 382, 382 (2011) (using micro-level data to perform a statistical analysis and finding that a previous reform simplifying business entity formation in Mexico increased the number of registered businesses by 5% and increased wage employment by 2.2%).

domestic product (“GDP”), while the same growth could be achieved from growing 105 midsize companies into large companies.⁸² That is in no way to say that it is not valuable to foster the growth and creation of micro and small enterprises in Mexico; rather, it demonstrates that it is particularly valuable to provide continued support and reduce the barriers to growth that these businesses face as they scale up.⁸³ Here, the income cap makes the SAS a transitory entity not intended to grow with the new businesses. So, while the Mexican SAS reduces barriers to entry for new businesses, it only helps these businesses at the point where they make the smallest contribution to the national economy, but does not aid them in stages where their growth could have a more noticeable effect. In fact, by forcing a conversion to a traditional entity as the business grows, the SAS burdens businesses with the same barriers that it initially removed.

A counterargument to the point that the SAS would be more useful were it not transitory by design is that the lower thresholds for SAS incorporation necessarily mandate that the entity itself carry more restrictions than traditional entities in order to prevent misuse. In this sense, allowing SAS entities to be used by any business in any stage would ignore that the unique features of the SAS are particularly tailored to micro, small, and start-up businesses. Put simply, if the legislature had intended that any business of any size and stage of development could be an SAS, it would have simply reformed the traditional entity types to permit a sole shareholder or owner.

This counterargument is overshadowed by the apparent arbitrariness of the \$5 million MXN cap. As noted above, one argument against SAS implementation is that SAS reform lacked analysis and specialized discussion in designing the reform.⁸⁴ This is illustrated in the case of the income cap. The legislative history indicates that this cap was put in place due to fear of small business failure.⁸⁵ However, this result does not logically follow. If a business has shown solid growth from a new company to one meeting the

⁸² Álvaro Rodríguez Arregui, *Mexico’s Growth Will Come from Entrepreneurship and Small and Medium-Sized Enterprises*, 7 INNOVATIONS 1, 4 (2012), https://www.mitpressjournals.org/doi/pdfplus/10.1162/INOV_a_00110.

⁸³ As noted above, one of the goals of the legislation was to increase registration of the already existent informal economy. *See supra* Part II.B. However, past research on Mexico has shown that while former wage earners are more likely to open a new business because of barrier reduction, unregistered business owners are not more likely to register their business. *See Bruhn, supra* note 81, at 382. This is therefore an additional reason why it makes more sense to focus on also helping new businesses as they grow rather than to simply try to increase registration.

⁸⁴ Contreras Bustamante, *supra* note 42.

⁸⁵ Discusión del Dictamen, *supra* note 33, at 2.

income cap, such a business should be less likely to fail rather than more likely. Therefore, by the time businesses reach the income cap, following the logic of the business failure risk, it does not seem pertinent to test their further potential for success by forcing conversion. Rather, such a business should be encouraged to continue growing by providing ongoing access to more lenient structures where it can continue its successful corporate governance as developed. The SAS would be more conducive to economic growth were it reformed to likewise reduce barriers for businesses as they grow. This could occur through total elimination of barriers such as the income cap or through some other form of graduated, thoughtfully reasoned restrictions that grow with the company.

2. The Income Cap Incentivizes “Bad Behavior” by SAS Owners

As the SAS delays the monetary and administrative burdens associated with forming a traditional business entity in Mexico until the point where the business reaches the income cap, this could potentially incentivize businesses to limit or control growth as to reduce the need for conversion or misreport total annual incomes to keep them below the SAS threshold—especially in the case of a one-time windfall. It could also incentivize true sole business owners to find sham shareholders or partners to allow for conversion. This is because the other limited liability entity types available in Mexico, the *Sociedad de Responsabilidad Limitada*, or Limited Liability Company (“SdRL”),⁸⁶ *Sociedad Anónima*, or Corporation (“SA”),⁸⁷ and *Sociedad Cooperativa*, or Cooperative Society (“SC”),⁸⁸ all require at least two shareholders or partners.⁸⁹ However, none of these laws have a minimum capital-per-shareholder requirement.⁹⁰ This means it is entirely possible, and in fact common practice,⁹¹ to have a true owner of the business who holds the majority of the capital, while another person, such as a family member, could hold as little as one peso of capital. Rather than allow for sham associations

⁸⁶ LGSM cap. IV.

⁸⁷ *Id.* cap. V.

⁸⁸ *Id.* art. 1, frac. IV; *id.* cap. VII; Ley General de Sociedades Cooperativas [LGSC], DOF 03-08-1993, últimas reformas 13-08-2009, formato PDF, <http://www.siger.gob.mx/legismerc/LGSC.pdf> (last visited Apr. 21, 2018).

⁸⁹ LGSM art. 89, frac. I (*Sociedad Anónima*); *id.* arts. 59, 61 (*Sociedad de Responsabilidad Limitada*) (referring to “partners,” plural, and capping the number of partners at fifty); LGSC art. 2 (*Sociedad Cooperativa*) (referring to “persons,” plural).

⁹⁰ See *infra* Table 1.

⁹¹ Esparza García, *supra* note 42.

with realistically only one true owner, it would be preferable to reform the law to reflect that there can be only one owner regardless of the business size.

Notably, this point does not necessarily require reforming the SAS entity. Alternatively, the Mexican legislature could develop a second unipersonal entity available to converting SAS entities, and could in other regards regulate this entity like a traditional business entity. Nonetheless, further reform is desirable to ensure that SAS entities and their owners have a properly illuminated path to growth without unnecessary restriction.

3. Allowing Juridical Shareholders and Ownership of Multiple SAS Entities Would Support Economic Efficiency

Lastly, allowing for both wholly owned subsidiaries⁹² and for SAS owners to own more than one entity is economically beneficial because it reduces creditor-monitoring costs. As the SAS law currently stands, an SAS cannot be used as a wholly owned subsidiary for any other entity type because it cannot have juridical persons as shareholders.⁹³ However, under creditor-monitoring theory, wholly owned subsidiaries are typically seen as beneficial to creditors rather than detrimental. Credit-monitoring theory explains that when a company is able to form wholly owned subsidiaries to represent its specialized business interests, a creditor can better evaluate the specific business of the subsidiary. Creditors include not only financial institutions such as banks, but also groups such as employees who receive a paycheck after they have worked, customers who pay before receiving goods or services, and suppliers who supply on credit. Creditors assess businesses to determine the terms on which they will supply credit to a firm. That is, they assess the probability that the business might fail and its ability to pay its creditors if it does.⁹⁴ For example, imagine that a business had only one entity, but from that entity, ran a restaurant, a cookbook shop, and a noodle factory. Alternatively, the business could have a holding company that holds three wholly owned subsidiaries: one for the bookstore, one for the restaurant, and one for the noodle factory. In the second scenario, it would be easier for

⁹² “Wholly owned subsidiary” refers to an entity that has as its sole shareholder another juridical entity.

⁹³ LGSM art. 260.

⁹⁴ Kenneth Ayotte & Henry Hansmann, *Legal Entities as Transferable Bundles of Contracts*, 111 MICH. L. REV. 715, 720–21 (2013).

creditors to assess the individual businesses because they would only be faced with assessing the individual businesses rather than the entity as a whole.⁹⁵

As the SAS currently exists, it discourages this result. An SAS could run multiple types of businesses from the same entity. This is because SAS ownership is limited to only those who are not the majority owner in any other Mexican business entity⁹⁶ as paired with the fact that the law does not limit the licit business objectives an SAS can have⁹⁷—meaning its objective could be “any business purpose,” or the like. This is a more difficult structure for creditors to assess than if the businesses were spread out through separate SAS entities, either in the form of many separate businesses owned by one shareholder or separate SAS entities owned by a holding company. Both under the status quo and the imagined reform, these businesses could be limited to start-ups, if the Mexican legislature so desires.

In the same vein, it would likewise be beneficial if other business entity types could hold SAS entities for two reasons: first, allowing wholly owned subsidiaries reduces creditor-monitoring costs; and second, allowing juridical persons to own SAS shares fosters small-business funding. Already-established firms should likewise have access to SAS entity formation in order to reduce their monitoring costs. Arguably, in the face of concern about overly large businesses bypassing notary, registration, and reporting processes by using an SAS,⁹⁸ forming an SAS subsidiary is a happy medium. That is because these businesses have already formed using the traditional, more burdensome procedures, and would only be adding another entity to their existing group. These businesses would not be avoiding the process altogether, but rather streamlining their growth down the road.

Additionally, allowing for juridical-person shareholders of SAS entities would help encourage economic growth because this is a common start-up investment method. The standard way that venture capital firms and angel investors (together, “VCs”) operate is by buying a portion of the equity of a start-up that they assess as having potential and then later selling the shares when the company becomes profitable or goes public.⁹⁹ They do this because start-ups are inherently risky, and there are generally restrictions on charging

⁹⁵ For a similar explanation, see *id.* at 721.

⁹⁶ LGSM art. 260.

⁹⁷ *Id.* arts. 3, 264.

⁹⁸ See generally *Discusión del Dictamen*, *supra* note 33 (discussing these concerns throughout the legislative discussion).

⁹⁹ See J. Paul Stouse, *Venture Capital Financing*, 49 LA. B. J. 308, 308–09 (2002).

the kinds of interest that would be necessary to balance the cost and risk of start-up investment through other types of lending. However, in the case of the SAS, the entities are not allowed to have juridical-person shareholders. Therefore, unless the VCs find a pertinent alternate financing method, they will not want to invest in start-ups that are formed as an SAS. This means that entrepreneurs hoping for early funding may be forced into the burdensome company registration schemes that the SAS law was intended to bypass. The SAS law should, therefore, be reformed to allow SAS entities to take funding from firms like VCs. An alternative to a total reform allowing any juridical person to hold shares in an SAS would be to allow only registered financial firms or VCs to do so for investment purposes.

In order to better reflect its legislative intent as explained above, the Mexican legislature should consider reforming the SAS law to remove the income cap, allow the SAS to be used as a wholly owned subsidiary, allow SAS controlling shareholders to own more than one entity, and allow for juridical-person SAS shareholders. The income cap should be lifted or otherwise reformed because it serves as a barrier to growth for companies, only shifts the burdens of registration down the road, does not reflect the reality of when businesses are most likely to fail, and, in some circumstances, creates perverse incentives to find sham partners or limit or misrepresent growth as to avoid the necessity of entity conversion. The SAS should be usable as a wholly owned subsidiary and SAS controlling shareholders should be able to hold more than one SAS because this allows for specialized entities that in turn reduce creditor-monitoring costs—a more economically efficient result. Finally, the SAS should be able to have juridical-person shareholders because this enhances start-up ability to receive initial funding from outside sources, which is important for business growth. The above ideas for lifting restrictions can be seen as a jumping-off point for how the entity could be reformed to increase economic benefit and efficiency.

B. Rule of Law Analysis: The Mexican SAS Reform Lacks Clarity and May Be Difficult to Comply With

There is a rule of law argument for reforming the Mexican SAS law because the transitory nature of the entity creates the risk of unpredictability for a standard user. In other words, as the SAS law currently exists, its function may not meet its intention. Reform could foster simpler compliance and therefore bolster the rule of law in this context. Two facets of rule of law

deficit—reasonable clarity and capability of compliance—demonstrate this point.

While the rule of law is defined often but rarely consistently, one of the most well-respected conceptualizations is from Lon Fuller.¹⁰⁰ Fuller defines the rule of law as consisting of eight elements: the law must be 1) generally applicable rather than decided on an ad hoc basis; 2) publicly available or otherwise made available to affected parties; 3) prospective rather than retroactive; 4) reasonably understandable and clear; 5) not internally contradictory; 6) capable of being complied with—not requiring conduct beyond the powers of the affected party; 7) reasonably stable so that the subject can orient its actions in accordance with the law; and 8) possess congruence between the rules as announced and their administration.¹⁰¹

Here, at first glance, it appears that the Mexican SAS law fulfills the rule of law factors: 1) it applies equally to everyone who wishes to constitute a Mexican SAS;¹⁰² 2) its text is readily available both as part of the LGSM online¹⁰³ and on government web pages explaining the new entity type;¹⁰⁴ 3) entity founders must explicitly choose the SAS entity and there is no prescribed manner for it to be retroactively applied against their will;¹⁰⁵ 4) the text of the law is not overly complicated¹⁰⁶ and is broken down in various government publications; 5) it appears theoretically possible to comply with

¹⁰⁰ It seems telling of his influence on legal philosophy that a WestLaw search for “Lon /2 Fuller [as to account for instances where his middle initial is included] & ‘rule of law’” returns 3016 law review and journal article results. *See, e.g.*, Jeffrey A. Brauch, *The Margin of Appreciation and the Jurisprudence of the European Court of Human Rights: Threat to the Rule of Law*, 11 COLUM. J. EUR. L. 113, 123 (2005) (citing Fuller’s definition of the rule of law and noting its importance); Margaret Jane Radin, *Reconsidering the Rule of Law*, 69 B.U. L. REV. 781, 784–85 (1989) (same); James W. Torke, *What Is This Thing Called the Rule of Law?*, 34 IND. L. REV. 1445, 1446 (2001) (same).

¹⁰¹ LON FULLER, *THE MORALITY OF LAW* 33–39 (1964) (outlining these factors through his parable of King Rex); Brauch, *supra* note 100, at 123 (citing FULLER, *supra*, at 38–91).

¹⁰² *See generally* LGSM cap. XIV (outlining the SAS law without providing exceptions requiring ad hoc application).

¹⁰³ *See id.*

¹⁰⁴ *See Tu Empresa*, GOB.MX, <https://www.gob.mx/tuempresa> (providing information about what the SAS entity is and how to form one); 6 *Diferencias Entre la S.A.S. y la S.A.*, INSTITUTO NACIONAL DE EMPRENDEDOR: BLOG DE EMPRENDEDOR (Oct. 11, 2016), <https://www.inadem.gob.mx/6-diferencias-entre-la-s-a-s-y-la-s-a/> (explaining the differences between the SAS and a traditional *Sociedad Anónima*).

¹⁰⁵ *See generally* LGSM. Notably, there is no provision allowing for another entity type to automatically transform into an SAS if it drops to one shareholder and otherwise meets the requirements, although the law does outline such a drop in the number of shareholders as a reason for automatic dissolution of an entity. *See id.* art. 229, frac. IV.

¹⁰⁶ *See generally id.* cap. XIV. The author, whose first language is not Spanish and who is not a lawyer in any Spanish-speaking jurisdiction, found it easy to follow. *See also Tu Empresa*, *supra* note 104; 6 *Diferencias Entre la S.A.S. y la S.A.*, *supra* note 104.

all of the provisions of the law at the same time;¹⁰⁷ 6) with the exception of unlikely events, such as possible government error in running the registration system,¹⁰⁸ the affected founder can control his or her own compliance with the law; 7) although reasonably new, the law has not been amended since its promulgation;¹⁰⁹ and 8) there is no reason to believe there is a lack of congruence between the rules as announced and their administration, as the government registration portal outlines the same applicable rules as the law.¹¹⁰

However, an issue arises when considering that, per its description of legislative intent, the law is targeted at unsophisticated business founders, such as youths, new entrepreneurs, and the informal economy.¹¹¹ The text of the law helps ensure this intent by stating that shareholders of an SAS may not be controlling shareholders in any other Mexican business entity,¹¹² therefore limiting the pool of SAS shareholders to those who are unlikely to be particularly experienced in managing a business entity. The provision of the law that is problematic under the rule of law theory in this context is the capping of annual total income of the SAS business at \$5 million MXN (approximately \$250,000 USD). After the threshold point, the entity must transform into another entity, which would require a second shareholder and more difficult registration processes involving a public notary,¹¹³ or instantly lose its limited liability protection.¹¹⁴ Arguably, this violates the rule of law norms both of reasonable clarity—when taking into account who must understand this legal provision—and of capability of being complied with—when taking into account how transformation so as to maintain limited liability is to occur.

As noted above, the law is targeted at unsophisticated businesspeople. Therefore, it is not outside the realm of possibility that a sole SAS shareholder may not understand the difference between income and profits and, as such, be completely unaware that they have lost limited liability protection due to high total annual income but low annual profits. As noted above, the text of the law fails to specify whether this cap is gross income, net income, income

¹⁰⁷ See generally LGSM cap. XIV.

¹⁰⁸ See *id.* art. 263 (outlining the registration system, including points of government involvement).

¹⁰⁹ See *id.* cap. XIV (amendments).

¹¹⁰ See *Tu Empresa*, *supra* note 104; *cf.* LGSM cap. XIV.

¹¹¹ Exposición de Motivos, *supra* note 25, at 1.

¹¹² LGSM art. 260.

¹¹³ See, e.g., LGSM cap. V (outlining how to form a *Sociedad Anónima* in Mexico, which requires at least two shareholders and the involvement of a public notary).

¹¹⁴ See *id.* art. 260 (capping SAS annual total income at \$5 million MXN).

before taxes, or income after taxes.¹¹⁵ This lack of specificity could easily create a very confusing situation for a new business owner who does not understand how to account for the income cap. The formation provisions for the SAS entity make this type of error even more likely to occur. While it is generally beneficial that the SAS can be registered online by the shareholder(s), the lack of mandatory involvement of any sort of legal professional¹¹⁶ increases the likelihood that the shareholder(s) will be unaware of or fail to understand the income cap risk.

Additionally, the instantaneity of losing limited liability protection if the SAS does not transform into another entity could be considered compliance-challenged when taking into account that registration of other entities often takes upwards of three weeks and can cost around \$30,000 MXN (approximately \$1500 USD),¹¹⁷ a large sum in a country where the average monthly income is approximately \$750 USD.¹¹⁸ The cost issue is exacerbated when considering that the need to transform or lose liability protection is based on income, not profits,¹¹⁹ so a business could technically reach the \$5 million MXN limit without seeing sufficient profits to finance the transformation. Likewise, the time it takes to constitute a different entity type could be an issue if rapid or sudden, perhaps unforeseen, income brings the business to the annual threshold and it does not have time to find another shareholder and transform its entity structure.

Therefore, the provision in the law governing the Mexican SAS providing for a \$5 million MXN income cap wherein after the entity automatically and instantly loses its limited liability protection may signal a rule of law deficit. This is for two reasons: the type of business owners that the law targets are particularly ill-equipped to clearly understand this rule, and due to the instant nature of the loss of limited liability coverage, entity conversion as a solution may not be realistically possible in all situations.

¹¹⁵ *Id.*

¹¹⁶ *See id.* art. 263, frac. VI (noting that the use of a public notary is optional).

¹¹⁷ *See, e.g., 6 Diferencias Entre la S.A.S. y la S.A., supra* note 104 (noting a three-week incorporation time for *Sociedades Anónimas* and quoting the price at around \$30,000 MXN); *Ease of Doing Business in Mexico, supra* note 29 (quoting an incorporation time for a *Sociedad Anónima* in Mexico City of 8.5 days, but also noting that the costs of incorporation would be about 18.2% of the standard income per capita).

¹¹⁸ *Ease of Doing Business in Mexico, supra* note 29 (noting that the gross national income per capita is \$9040 MXN, which divided by twelve produces a monthly income).

¹¹⁹ LGSM art. 260.

C. *Comparative Analysis: The Mexican SAS Is Uniquely Restrictive When Compared to Similarly Situated Countries*

The restrictive nature of the Mexican SAS framework is illustrated by comparing the Mexican unipersonal limited liability entity law to those of other similarly situated countries. When considered alongside a set of Latin American counterparts, it is apparent that many of the restrictions critiqued above are unique to Mexico. Appendix B provides a table comparing the unipersonal limited liability entities of the countries discussed within on a variety of factors.

Latin America is a region with a unique legal framework. A fundamental unifying characteristic of the corporate legal structure norms of most of Latin America, including Mexico, is that these norms are code-based.¹²⁰ The commercial codes of Latin America are founded on the continental European civil law tradition, particularly the French Napoleonic Code.¹²¹ While the codes of different Latin American countries have developed separately, they share the same roots. In recognition of the unique legal heritage of Latin America, this section compares the Mexican SAS entity to the available unipersonal limited liability entities of five other similarly situated Latin American countries: Argentina, Chile, Costa Rica, Panama, and Uruguay.¹²² These countries were selected because, like Mexico, they all have civil legal systems and they are all former Spanish colonies, thus enhancing their shared legal heritage.¹²³ Additionally, within the universe of countries satisfying these general characteristics, as of the end of 2017, they are the five largest economies based on GDP per capita, with Mexico coming in sixth.¹²⁴ These countries serve as examples of implementation (or lack of

¹²⁰ Francisco Reyes Villamizar, *Sociedad por Acciones Simplificadas: Una Alternativa Útil para los Empresarios Latinoamericanos*, 59 THÈMIS REVISTA DE DERECHO 73, 75–76 (2011) (Peru), <http://revistas.pucp.edu.pe/index.php/themis/article/view/9096/9507>.

¹²¹ *Id.* at 80.

¹²² Notably, Colombia also offers an SAS entity. However, it is not discussed in this comment as to instead highlight the discrepancies that exist between the similarly situated Latin American countries selected, including those that have not instituted a SAS-type entity.

¹²³ See Courtney Jung et al., *Economic and Social Rights in National Constitutions*, 62 AM. J. COMP. L. 1043, 1090 tbl.A1 (2014) (listing these countries under “Pure Civil Law”); Daniel Oto-Peralías & Diego Romero-Ávila, *The Distribution of Legal Traditions Around the World: A Contribution to the Legal-Origins Theory*, 57 J.L. & ECON. 561, 573 tbl.A2 (2014) (listing these countries as former Spanish colonies).

¹²⁴ See *IMF DataMapper: GDP per Capita, Current Prices*, INT’L MONETARY FUND, http://www.imf.org/external/datamapper/NGDPDPC@WEO/OEMDC/ADVEC/WEO_WORLD (last visited Apr. 21, 2018) (listing Uruguay first at \$17,250 USD, Panama second at \$14,410 USD, Chile third at \$14,310 USD, Argentina fourth at \$14,060 USD, Costa Rica fifth at \$11,860 USD, and Mexico sixth at \$9,250 USD). All but Mexico have a GDP per capita above the Central and South America regional averages of \$5380

implementation) of unipersonal limited liability entities in economically successful countries with a legal heritage similar to that of Mexico.

The restrictive nature of the Mexican SAS entity is particularly apparent when compared with its peers. The following entities will be considered: from Argentina, the *Sociedad Anónima Unipersonal*, or Unipersonal Corporation (“Argentine SAU”) and the Argentine SAS; from Chile, the *Empresa Individual de Responsabilidad Limitada*, or Individual Limited Liability Company (“Chilean EIRL”) and the Chilean SpA; from Costa Rica, the *Sociedad Anónima*, or Corporation (“Costa Rican SA”) and the *Empresa Individual de Responsabilidad Limitada*, or Individual Limited Liability Company (“Costa Rican EIRL”); and, from Panama the *Sociedad Anónima*, or Corporation (“Panamanian SA”). While Uruguay is included and considered, it has no unipersonal entity. All SAS and SpA entities are collectively referred to in this Comment as “SAS-type” entities.

Notably, the only country in this comparison that does not have a unipersonal limited liability entity is Uruguay,¹²⁵ and the only country that does have a unipersonal limited liability entity but does not allow for incorporation by a single owner is Panama.¹²⁶ It is therefore the norm rather than the exception for Mexico’s Latin American peers, such as Argentina, Chile, and Costa Rica, to allow for a unipersonal limited liability entity that can be incorporated by the sole owner.

USD and \$9300 USD, respectively. *Id.* As such, these countries can be considered to be relatively economically successful in their regions.

¹²⁵ See *infra* Table 1.

¹²⁶ However, it is notable that in practice, Panamanian *Sociedad Anónimas* are often incorporated by two “subscribers” who are attorneys at the firm hired by the client, and then the entity is immediately transferred in full to the sole owner. Therefore, this two-shareholder-incorporation minimum can be seen as more theoretical than actual. See Law No. 32, Sobre Sociedades Anónimas art. 1, Febrero 26, 1927, [5067] GACETA OFICIAL (Panama), <https://panama.eregulations.org/media/Ley%2032%20de%201927%20-%20Sociedades.pdf> [hereinafter Law No. 32 Panama], art. 1; see also *Sociedades Anónimas: Preguntas Frecuentes*, DELVALLE & DELVALLE L. FIRM, <https://www.delvallepanama.com/es/Sociedades-Anonimas/preguntas-frecuentes-2.html> (last visited Apr. 21, 2018) (stating that common practice is for two lawyers representing the client to visit the notary and serve as the two initial shareholders, and then immediately transfer all shares to the true owner); *Sociedades Anonimas en Panama*, BFC LAWYERS, <http://www.offshorepanamaniancorporations.com/es/> (last visited Apr. 21, 2018) (indicating that it is common practice for firm lawyers to act as the initial subscribers and then, after formation and registration, renounce their subscriber rights and transfer all shares to the client); Gilberto Boutin, *Panamanian Offshore Company Law and Conflicting Laws*, 2 INT’L BUS. L.J. 171, 177 (2007) (“Truth to tell, it is inaccurate to describe or treat simple subscribers as shareholders in the offshore company, because in most cases the subscribers are only employees of the law firm responsible for creating the company registered.”).

Similarly notable is the timeline for adoption of these entities in the sample group. Costa Rica embraced single owner limited liability in 1961,¹²⁷ and was followed by Panama shortly thereafter in 1966.¹²⁸ However, other countries did not follow suit for more than four decades, as Chile did not adopt a unipersonal limited liability entity until 2003,¹²⁹ and Argentina did not do so until 2014.¹³⁰ With its 2016 adoption,¹³¹ Mexico can be seen as part of this later adoption wave of limited liability entities. This two-wave timeline also shows a move towards easily accessible online incorporation procedures, as all of the second wave countries have implemented some sort of online incorporation procedure, while the countries that embraced unipersonal limited liability in the 1960s still require some sort of in-person process.¹³²

All the entities can be viewed as functionally similar in terms of limiting liability, as liability is limited to either the capital of the shareholder or promised capital of the shareholder.¹³³ Perhaps the only exception that can be seen as less limited is the Chilean EIRL, which only limits liability of the owner for permissible commercial activities within the single declared purpose of the entity.¹³⁴ However, despite more severe language, functionally this is likely fairly equivalent to the others, as it simply limits liability to proper activities of the business. Accordingly, all the entities appear to be true limited liability entities per the terms of their authorizing statutes.

¹²⁷ See *infra* Table 1.

¹²⁸ However, Panama has since retired the unipersonal limited liability entity that it enacted at that time, the *Empresa Individual de Responsabilidad Limitada* (“EIRL”). See *infra* Table 1. Notably, Panama first directly allowed for a unipersonal limited liability entity in 1966 with the creation of the EIRL, or Individual Limited Liability Company. See Law No. 24, Por la Cual Se Regulan las Empresas de Responsabilidad Limitada, Febrero 1, 1966, [15588] GACETA OFICIAL, <https://docs.panama.justia.com/federales/leyes/24-de-1966-mar-31-1966.pdf> [hereinafter Law No. 24 Panama]. However, this law was derogated in 2009, and the new law no longer recognizes the EIRL, and states that Panamanian LLC-equivalents must dissolve if they have less than two shareholders for more than sixty business days. See Law No. 4, Que Regula las Sociedades de Responsabilidad Limitada art. 44(8), Enero 9, 2009, [26202-A] GACETA OFICIAL, <https://docs.panama.justia.com/federales/leyes/4-de-2009-jan-15-2009.pdf>.

¹²⁹ See *infra* Table 1.

¹³⁰ See *infra* Table 1.

¹³¹ See *infra* Table 1.

¹³² See *infra* Table 1. It is notable that all of the countries with online procedures advertise incorporation times for their unipersonal limited liability entities of a day or less, and those involving some in-person aspect likewise advertise times ranging from one to six days, while the World Bank Doing Business Data provides times of six days (Panama) to twenty-four days (Argentina). See *infra* Table 1. It would be interesting to monitor these World Bank published times and see if they decrease as online process becomes more standard in Latin America.

¹³³ See *infra* Table 1.

¹³⁴ See *infra* Table 1.

Two areas where Mexico bests many of its peers are the costs of formation and initial capitalization. Formation of a Mexican SAS is free.¹³⁵ The only other country that offers no cost to form a unipersonal limited liability entity is Chile.¹³⁶ Costs in the other countries range from approximately \$80 USD (Argentina)¹³⁷ to \$990 USD (Panama).¹³⁸ Likewise, the Mexican SAS has no minimum capital requirement.¹³⁹ Chile and Costa Rica also offer no minimum capital requirements,¹⁴⁰ but Costa Rica does not offer free formation.¹⁴¹ Therefore, the formation pricing models and capitalization requirements used by Mexico and Costa Rica are the best in terms of creating truly accessible entity forms by lowering the financial barriers to entry.¹⁴²

However, three areas where Mexico is comparatively, and arguably overly, restrictive are the annual income cap of \$5 million MXN, the limitation of shareholders to natural persons only, and the limitation of shareholders to only those who are not controlling shareholders in any other Mexican entity. These measures are problematic either because they are not theoretically sound, not in line with the purpose of the law, or both.¹⁴³ When viewed comparatively, it becomes apparent that these measures are also uniquely problematic to Mexico, as none of its peers have adopted similar provisions.¹⁴⁴ These nonconformities are especially notable when looking to Argentina and Chile, as their SAS-type entities are likewise targeted to start-up businesses,¹⁴⁵ but do not impose these same hurdles.

¹³⁵ See *infra* Table 1.

¹³⁶ See *infra* Table 1.

¹³⁷ See *infra* Table 1.

¹³⁸ See *infra* Table 1.

¹³⁹ See *infra* Table 1.

¹⁴⁰ As the Panama \$10,000 USD minimum capitalization requirement is an “on paper” capital requirement and does not actually have to be paid at the time of incorporation, it could be argued that it likewise has no minimum capital requirement for incorporation. However, given that Panama offers by far the highest cost of incorporation, at around \$990 USD, it would be hard to argue that incorporation in Panama is without financial barriers to entry. *Id.*

¹⁴¹ See *infra* Table 1.

¹⁴² It is interesting that, of the countries considered, Mexico and Costa Rica have the lowest gross domestic incomes per capita, at approximately \$9040 and \$10,840, respectively. See *infra* Table 1. This may have influenced the importance of eliminating financial barriers to entry for start-up businesses in these countries.

¹⁴³ See *supra* Parts III.A, III.B.

¹⁴⁴ See *infra* Table 1.

¹⁴⁵ See *Crear una Empresa*, CHILE ATIENDE (Nov. 10, 2015), <https://www.chileatiende.gob.cl/fichas/ver/22718> (describing the SpA as recommended for entrepreneurs seeking investors); *Los Emprendedores Argentinos Ya Pueden Crear Su Empresa en un Día en la Ciudad de Buenos Aires*, MINISTERIO DE PRODUCCIÓN (Sept. 28, 2017), <https://www.produccion.gob.ar/2017/09/28/los->

Mexico is the only country imposing an income cap on any unipersonal limited liability entity.¹⁴⁶ Mexico's income cap is therefore a singularly harsh attempt to limit the use of unipersonal limited liability entities. Likewise, the limitation to natural persons only as shareholders of its only unipersonal limited liability entity is unique to Mexico. While Chile and Costa Rica both limit use of their respective Chilean EIRL and Costa Rican EIRL entity forms to natural persons only¹⁴⁷ and place other restrictions on them, such as having limited business objectives¹⁴⁸ and the inability to own other businesses,¹⁴⁹ each of those countries also offers a different unipersonal limited liability entity that can have legal persons as shareholders. In addition to the EIRL form, Chile offers the Chilean SpA, which can be incorporated by a single shareholder who can be a legal person,¹⁵⁰ and Costa Rica offers the Costa Rican SA, which does require two shareholders—who can be either natural or legal persons—to incorporate, but thereafter can reduce to one shareholder.¹⁵¹ This means that in both of those jurisdictions, there is an alternative available if a company would like to form a wholly owned subsidiary. However, in Mexico there is not.

The Argentine solution to the perceived problem of chains of unipersonal limited liability entities is notable. In Argentina, there are two options for unipersonal limited liability entities: 1) the Argentine SAU, which must first be formed as an Argentine *Sociedad Anónima*, or Corporation (“Argentine SA”), with a minimum of two shareholders and then later transformed to an Argentine SAU with only one shareholder;¹⁵² and 2) the Argentine SAS, which can be formed with only one shareholder who is a natural or legal person.¹⁵³ However, another Argentine SAS cannot own an Argentine SAS. In this way, Argentina provides options for companies who wish to incorporate a wholly owned subsidiary without allowing for stacking of the less stringent SAS entities as to produce a real or perceived overlimitation of liability through a corporate group. The Chilean, Costa Rican, and Argentine models all provide alternatives to the currently restrictive Mexican model.

emprendedores-argentinos-ya-pueden-crear-su-empresa-en-un-dia-en-la-ciudad-de-buenos-aires-67469 (touting the Argentine SAS as an entity for start-ups).

¹⁴⁶ See *infra* Table 1.

¹⁴⁷ See *infra* Table 1.

¹⁴⁸ See *infra* Table 1.

¹⁴⁹ See *infra* Table 1.

¹⁵⁰ See *infra* Table 1.

¹⁵¹ See *infra* Table 1.

¹⁵² See *infra* Table 1.

¹⁵³ See *infra* Table 1.

Finally, the Mexican SAS is the only entity of the group that limits shareholders to those who are not controlling shareholders in any other Mexican entity.¹⁵⁴ There is no analog to this in another comparable country's laws. In contrast, in Chile, where the Chilean EIRL is restrictive in its own way, owners are permitted to have multiple Chilean EIRLs for different business objectives.¹⁵⁵ In this way, the Mexican SAS functionally limits the amount of limited liability protection that one person can have while the unipersonal limited liability entities of similarly situated countries limit the liability of the business.

In summary, the timing of the Mexican SAS fits in the second wave of unipersonal limited liability entity legislation among its Latin American peers, and its brand of limited liability is comparable with the entities of its peers. The areas where Mexico excels in meeting the goal of introducing an entity structure with limited financial barriers to entry are the provision of free, online formation procedures and the nonexistent minimum capital requirement. However, the income cap and limitation of shareholders to only natural persons who are not controlling shareholders in another Mexican entity are comparatively restrictive and are ripe for reform to bring the Mexican entity in line with its counterparts.

IV. CONCLUSION

This Comment has analyzed the Mexican SAS entity through multiple lenses and repeatedly come to the conclusion that as it currently exists, it is too restrictive. However, what can be done to reform this entity structure in order to make it less restrictive?

The main drive behind the implementation of the SAS entity in Mexico is the pursuit of economic growth through the facilitation of new business creation. However, simply aiding new businesses to form but later throwing them into the complicated system that the SAS entity was intended to avoid is likely not the most effective way to meet this goal. This is both because larger businesses can individually account for significantly more overall economic growth and because this structure can create perverse incentives for businesses not to grow, not to report their growth, or to find sham shareholders for conversion. Additionally, subsidiaries, a function currently not allowed

¹⁵⁴ See *infra* Table 1.

¹⁵⁵ See *infra* Table 1.

for SAS entities, facilitate economic growth through both reducing creditor-monitoring costs and allowing for venture capital investment.

Keeping these findings in mind, the SAS could be brought further in line with its legislative intent by doing away with the earnings cap and opening up to any type of shareholder. Eliminating the earnings cap would be beneficial to the SAS entity because it would allow SAS entities to grow uninhibited without fear of losing their limited liability protection, and it would allow true single-owner entities to reflect their reality regardless of their size. Opening SAS entities up to juridical-person shareholders would allow the SAS to serve as a simple, easy-to-form subsidiary for companies already in operation who have already gone through the full formation process with a public notary and shown their legitimacy. It would also allow true start-up SAS entities to accept venture capital funding. Venture capital funding would be advantageous as other, more traditional methods of funding that do not include the sale of equity may not be available at the beginning stages of a company.

Further, the transitory nature of the Mexican SAS entity creates a risk of unpredictability for a standard user, particularly when considering that the law is targeted at unsophisticated users such as young people, entrepreneurs, and the informal economy. This is because the ability to instantly lose limited liability protection if conversion to another business entity type is not achieved before reaching the \$5 million MXN income cap may prove too difficult or complicated in some situations. Three suggestions address this problem. First, Mexico should consider eliminating its current restriction on SAS shareholders that prevents those who are the controlling shareholder in another Mexican entity from owning a SAS. This would allow the inexperienced groups the SAS currently targets to partner with experienced businesspeople that could guide the new business owners in following the letter of the law. Second, and perhaps more importantly, Mexico should consider removing the \$5 million MXN income cap. It appears that the income cap mainly serves to create an additional level of regulatory difficulty, and without this cap, the law would be simple to follow and administer for everyone involved. Third, if Mexico prefers to maintain the income cap, it is important that further regulations be promulgated and accessibly published so as to specify for a new business owner what “total annual income” means. For example, such regulations and promulgations should directly specify whether the cap is intended to account for gross income, net income, before

taxes, or after taxes, and it might also include examples of financial statements to practically demonstrate to new business owners how to locate this amount.

Finally, when compared to similarly situated Latin American countries with a unipersonal limited liability entity, Mexico stands alone in the types of restrictions it imposes. It is certainly true that some countries, such as Panama and Costa Rica, have yet to introduce SAS-type entities. However, these countries have long offered more traditional forms of unipersonal entities, and Mexican SAS restrictions are more properly compared to other SAS-type entities. The laws of other countries in the same vein should illustrate to Mexico that perhaps such restrictions are unnecessary. Therefore, for Mexico to better reflect the regional norm, it should consider eliminating the annual \$5 million MXN income cap, allowing juridical persons to be shareholders in SAS entities, and eliminating the restriction on those who are controlling shareholders in another Mexican entity from being shareholders in an SAS.

Comparison with other similarly situated Latin American countries also offers reform alternatives for Mexico. For example, the Argentine SAS, which is likewise targeted to new businesses and entrepreneurs, is not subject to the same restrictions as the Mexican SAS. Particularly, the Argentine SAS may have juridical shareholders. However, an SAS cannot own another SAS. In this way, the Argentine law preserves the SAS as a start-up centric entity rather than allowing corporate families to form consisting of SAS entities. If Mexico wishes to reform the Mexican SAS while preserving its start-up centric nature, it could look to the law reform efforts of similarly situated Latin American countries, like Argentina, for alternative legal structures.

This is not to say that Mexican SAS reform going forward must be solely for the purpose of shedding regulation. While many of the arguments against the Mexican SAS appear to be based in notary protectionism or general fears that are not truly unique to the SAS, there are some useful propositions for further regulation. For example, it might be pertinent to institute an official dispute procedure so that people who believe their electronic signatures were used in the formation of an SAS without their permission can dispute any attributed ownership interest. Further safeguards, such as automatically notifying the owner of an electronic signature if said signature is used to form an SAS or requiring SAS entities that reach a certain income level to begin setting aside a legal reserve, may also assuage fears about the new entity type over time.

Despite this call for further reform, the Mexican SAS is still a great achievement. The Mexican SAS is a huge leap towards the modernization of Mexican company law; it is the first juridical entity in Mexico to allow for a single shareholder, and it brought with it a sophisticated online registration system. Additionally, in regard to accessibility, such as through the cost of formation and any minimum capital requirements, Mexico has created a more accessible unipersonal entity than its peers. The Mexican SAS can be seen overall as a successful experiment: the SAS has demonstrated that Mexico is capable of running a framework for business incorporation that can be done quickly and online. Now that this has been tested with the small group of business people interested in forming an SAS entity, Mexico should utilize the springboard it has already designed and begin expanding this new framework to a variety of entity types and other processes, such as registration of a company name. Further reform to include a greater variety of businesses could foster economic growth at all levels.

administration, in the terms of article 2, section III of the Securities Market Law.

The total annual income of a simplified joint stock company may not exceed \$5 million MXN. In the event of exceeding this respective amount, the simplified joint stock company shall be transformed into another company regime contemplated in this Law, in the terms in which it is established in the rules indicated in article 263 of the same. The established amount in this paragraph shall update annually on the first of January of every year, considering the update factor corresponding to the period from the month of December in the penultimate year to the month of December of the year immediately preceding for which the update is made, as will be obtained in accordance with Article 17-A of the Fiscal Code of the Federation. The Secretary of Economy will publish the update factor in the Official Gazette of the Federation during the month of January of each year.

In the event that the shareholders do not carry out the transformation of the company referred to in the previous paragraph, they will have vicarious, joint and unlimited liability to third parties, without prejudice to any other liability that may have been incurred.

Article 261.- The name will be formed freely, but different from that of any other company and always followed by the words “*Sociedad por Acciones Simplificada*” [Simplified Joint Stock Company] or its abbreviation “S.A.S.”.

Article 262.- To proceed with the formation of a simplified joint stock company, only the following will be required:

- I. That there is one or more shareholders;
- II. That the shareholder or shareholders externalize their consent to form a simplified joint stock company under the bylaws that the Secretary of Economy will make available through the electronic formation system;
- III. That any of the shareholders have authorization issued by the Secretary of Economy for the use of the name; and
- IV. That all shareholders have a current advanced electronic signature certificate as recognized in the general rules issued by the Secretary of Economy in accordance with the provisions of Article 263 of this Law.

In no case shall the public deed requirement, notary public policy or any other additional formality be required for the constitution of the simplified joint stock company.

Article 263.- For purposes of the provisions of article 262 of this Law, the electronic formation system will be in the charge of the Secretary of Economy and will be carried out by digital means through the computer program established for that purpose, whose functioning and operation will be governed by the general rules issued by the same Secretary.

The formation procedure will be carried out in accordance with the following basis:

- I. A folio will be opened for each formation;
- II. The shareholder(s) will select bylaw clauses that the Secretary of Economy makes available through the system;
- III. The articles of organization for the simplified joint stock company will be generated electronically signed by all the shareholders, using the current electronic signature certificate referred to in section IV of article 262 of this Law, which will be delivered digitally;
- IV. The Secretary of Economy will verify that the articles of organization of the company comply with the provisions of article 264 of this Law, and if appropriate, send them electronically for registration in the Public Registry of Commerce;
- V. The system will digitally generate the registration slip for the simplified joint stock company in the Public Registry of Commerce;
- VI. The use of public notaries is optional;
- VII. The existence of the simplified joint stock company will be proved by the articles of organization of the company and the registration ticket in the Public Registry of Commerce;
- VIII. The shareholders requesting the formation of a simplified joint stock company will be responsible for the existence and veracity of the information provided in the system. Otherwise, they will be liable for any damages that may arise, without prejudice to the administrative or criminal penalties that may apply; and
- IX. Other regulations as established in the rules of the electronic formation system.

Article 264.- The bylaws referred to in the previous article should only contain the following requirements:

- I. Company name;
- II. Name of the shareholders;
- III. Address of the shareholders;

- IV. Federal Taxpayer Registry numbers of the shareholders;
- V. E-mail address for each of the shareholders;
- VI. Domicile of the company;
- VII. Duration of the company;
- VIII. The form and terms in which the shareholders are obligated to subscribe and pay their shares;
- IX. The number, nominal value and nature of the shares in which the capital stock is divided;
- X. The number of votes that each of the shareholders will have by virtue of their shares;
- XI. The purpose of the company;
- XII. The form of administration of the company.

The shareholder or shareholders will have vicarious and joint liability, as appropriate, with the company for the commission of conduct sanctioned as criminal.

The contracts concluded between the sole shareholder and the company must be registered by the company in the electronic system established by the Secretary of Economy in accordance with the provisions of article 50 Bis of the Commercial Code.

Article 265.- All of the shares indicated in section IX of article 264 must be paid within the term of one year from the date on which the company is registered in the Public Registry of Commerce.

When the total share capital has been subscribed and paid, the company must publish a notice in the electronic system established by the Secretary of Economy in terms of the provisions of article 50 Bis of the Commercial Code.

Article 266.- The Shareholders Assembly is the supreme body of the simplified joint stock company and is made up of all the shareholders.

The resolutions of the Shareholders Assembly shall be made by majority vote and it may be agreed that the meetings are held in person or by electronic means if an information system is established in terms of the provisions of article 89 of the Commercial Code. In any case, a record book of resolutions must be kept.

When the simplified joint stock company is composed of a single shareholder, it will be the supreme body of the company.

Article 267.- The representation of the simplified joint stock company will be in the charge of an administrator, a function that a shareholder will perform.

When the simplified joint stock company is composed of a single shareholder, it will exercise the powers of representation and will have the position of administrator.

It is understood that the administrator, by its sole designation, may conclude or execute all the acts and contracts included under the company purpose or that are directly related to the existence and operation of the company.

Article 268.- The decision-making of the Shareholders Assembly will be governed only according to the following rules:

- I. All of the shareholders will have the right to participate in the decisions of the company;
- II. The shareholders will have voice and vote, the shares will be of equal value and confer the same rights;
- III. Any shareholder may submit matters to the Assembly for consideration, to be included in the agenda, as long as (s)he asks the administrator in writing or by electronic means, if an information system is agreed to in accordance with the provisions of article 89 of the Commercial Code;
- IV. The administrator will send to all shareholders the matter subject to voting in writing or by any electronic means if an information system is agreed to in accordance with the provisions of article 89 of the Commercial Code, noting the date to cast the respective vote;
- V. The shareholders will cast their vote on the issues in writing or by electronic means if an information system is agreed to in accordance with the provisions of article 89 of the Commercial Code, either in person or outside the meeting;

The company's administrator will convene the Shareholders Assembly by publication of a notice in the electronic system established by the Secretary of Economy a minimum of five business days in advance.

The notice will include the agenda with the matters that will be submitted to the Assembly for consideration, as well as the corresponding documents.

If the administrator refuses to call the meeting, or does not do so within a term of fifteen days following receipt of a shareholder request, the meeting may be called by the judicial authority of the company's domicile, at the request of any shareholder.

Once the procedure established in this article has been exhausted, the resolutions of the Shareholders Assembly are considered valid and will be

binding on all shareholders if the vote was cast by a majority of the shareholders, unless the right to object provided for in this Law is exercised.

Article 269.- Modifications to the bylaws will be decided by majority vote.

At any time, shareholders may agree on forms of organization and administration different from the one contemplated in this Chapter; provided that the shareholders conclude the transformation of the simplified joint stock company to any other type of commercial company before a notary public, in accordance with the provisions of this Law.

Article 270.- Unless otherwise agreed, the alternative dispute resolution mechanisms provided for in the Commercial Code shall be favored to settle disputes that arise between shareholders, as well as disputes with third parties.

Article 271.- Unless otherwise agreed, the profits will be distributed in proportion to the shares of each shareholder.

Article 272.- The administrator will publish in the electronic system of the Secretary of Economy the annual report on the financial situation of the company in accordance with the rules issued by the Secretary of Economy in accordance with the provisions of article 263 of this Law.

Failure to present the financial situation for two consecutive years will result in the dissolution of the company, without prejudice to the liabilities incurred by the shareholders individually. For purposes of the provisions of this paragraph, the Secretary of Economy will issue the corresponding declaration of non-compliance in accordance with the procedure established in the rules mentioned in the preceding paragraph.

Article 273.- So far as they do not contradict this Chapter, the provisions of this Law governing the corporation as well as those relating to the merger, transformation, spin-off, dissolution and liquidation of companies are applicable to the simplified joint stock company.

In the case of the simplified joint stock company that is composed of a single shareholder, all of the provisions that refer to “shareholders” shall be deemed applicable with respect to the single shareholder. Also, those provisions that refer to “articles of organization” will be understood as referring to the “constituent instrument.”

Appendix B: Table 1—Comparing Available Limited Liability Unipersonal Entities in Mexico, Argentina, Chile, Costa Rica, Panama, and Uruguay

	Mexico	Argentina		Chile		Costa Rica		Panama	Uruguay
Name of available unipersonal limited liability entity	Sociedad por Acciones Simplificada (SAS) ¹⁵⁷	Sociedad Anónima Unipersonal (SAU)	Sociedad por Acciones Simplificada (SAS)	Empresa Individual de Responsabilidad Limitada (EIRL)	Sociedad por Acciones (SpA)	Sociedad Anónima (SA)	Empresa Individual de Responsabilidad Limitada (EIRL)	Sociedad Anónima (SA)	No unipersonal limited liability entity currently available ¹⁵⁸
Translation of name	Simplified Stock Corporation	Unipersonal Corporation	Simplified Stock Corporation	Individual Limited Liability Company	Stock Corporation	Corporation	Individual Limited Liability Company	Corporation	-
Law governing entity	Ley General de Sociedades Mercantiles, Capítulo XIV ¹⁵⁹	Ley General de Sociedades, Arts. 1, 11, 94 bis., 164, 186, 187, 299 ¹⁶⁰	Ley 27.349/2017 de Apoyo al Capital Emprendedor ¹⁶¹	Ley 19.857 Autoriza el Establecimiento de Empresas Individuales de Responsabilidad Limitada ¹⁶²	Código de Comercio, § 8 ¹⁶³	Código de Comercio, Capítulo VII ¹⁶⁴	Código de Comercio, Capítulo II ¹⁶⁵	Ley 32 de 1927 Sobre Sociedades Anónimas ¹⁶⁶	Ley 16.060 de Sociedades Comerciales ¹⁶⁷
Translation of law name	General Law on Mercantile Companies, Chapter XIV	General Company Law, Arts. 1, 11, 94 bis., 164, 186, 187, 299	Law 27.349/2017 for Support of Entrepreneurial Capital	Law 19.857 Authorizing the Establishment of Individual Limited Liability Companies	Commercial Code, § 8	Commercial Code, Chapter VII	Commercial Code, Chapter II	Law 32 of 1927 About Corporations	Commercial Companies Law 16.060
Year enacted as unipersonal limited liability entity	2016 ¹⁶⁸	2014 ¹⁶⁹	2017 ¹⁷⁰	2003 ¹⁷¹	2007 ¹⁷²	1961 ¹⁷³		Unclear ¹⁷⁴ (EIRL in 1966) ¹⁷⁵	-
Minimum number of shareholders, etc. required at formation	One shareholder ¹⁷⁶	Two shareholders ¹⁷⁷	One shareholder ¹⁷⁸	One owner ¹⁷⁹	One shareholder ¹⁸⁰	Two shareholders ¹⁸¹	One owner ¹⁸²	Two shareholders ¹⁸³	-
Natural vs. legal persons?	Natural persons only ¹⁸⁴	Both ¹⁸⁵	Both ¹⁸⁶	Natural persons only ¹⁸⁷	Both ¹⁸⁸	Both ¹⁸⁹	Natural persons only ¹⁹⁰	Both ¹⁹¹	-
How is liability limited?	Limited to the amount of capital per shareholder ¹⁹²	Limited to the value of the shares subscribed per shareholder ¹⁹³	Limited to the value of stock subscribed or acquired, including up to the amount of any promised contributions when dealing with third parties ¹⁹⁴	Limited to the committed contribution payments of the owner for EIRL permissible commercial activities ¹⁹⁵	Limited to amount of capital per shareholder ¹⁹⁶	Limited to amount of capital per shareholder ¹⁹⁷	Limited to amount of capital (as there is only one owner) ¹⁹⁸	Limited up to the amount the shareholder owes for its shares ¹⁹⁹	-
Online registration?	Yes ²⁰⁰	No ²⁰¹	Yes ²⁰²	Yes ²⁰³	Yes ²⁰⁴	Partial ²⁰⁵		No ²⁰⁶	-
Registration time advertised?	One day ²⁰⁷	No ²⁰⁸	Less one day (instant) ²⁰⁹	One day ²¹⁰		One to five days ²¹¹		One to six days ²¹²	-
General time to	8.5 days ²¹⁴	24 days ²¹⁵		5.5 days ²¹⁶		22.5 days ²¹⁷		6 days ²¹⁸	6.5 days ²¹⁹

incorporate a business (World Bank Data) ²¹³									
Minimum share capital?	No ²²⁰	\$100,000 ARS (approx. \$5,300 USD) ²²²	Two times the current minimum wage ²²³ Currently \$17,720 ARS (approx. \$950 USD) ²²⁵	No ²²⁶	No ²²⁷	No ²²⁸	No ²²⁹	\$10,000 USD (on paper) ²³⁰	-
Cost of formation?	No cost ²³¹	\$1,500 ARS (approx. \$80 USD) ²³³	\$4,430 ARS (approx. \$235 USD) ²³⁵	No cost ²³⁶	No cost ²³⁷	₡236,916.08 CRC ²³⁸ (approx. \$415 USD) ²³⁹		Approx. \$990 USD ²⁴⁰	-
Maximum income?	\$5 million MXN per year to be adjusted yearly by regulation ²⁴¹ (approx. \$250,000 USD) ²⁴²	No ²⁴³	No ²⁴⁴	No ²⁴⁵	No ²⁴⁶	No ²⁴⁷	No ²⁴⁸	No ²⁴⁹	-
Gross Domestic Income Per Capita (World Bank Data) ²⁵⁰	\$9,040 USD ²⁵¹ \$753 USD/month	\$11,960 USD ²⁵² \$967 USD/month		\$13,530 USD ²⁵³ \$1,128 USD/month		\$10,840 USD ²⁵⁴ \$903 USD/month		\$12,140 USD ²⁵⁵ \$1,012 USD/month	\$15,230 USD ²⁵⁶ \$1,269 USD/month
Other notable restrictions	Shareholders cannot be controlling shareholders in any other Mexican commercial legal entity ²⁵⁷	A SAU must incorporate as a Sociedad Anónima and may later transform into a SAU ²⁵⁸	24 hour online registration is currently only available for residents of Buenos Aires, but there are plans to expand the program ²⁵⁹	EIRL may be used for any civil or commercial operations “except those reserved by the law to corporations,” ²⁶⁰ and it may only have one objective ²⁶¹	-	-	EIRLs may not incorporate or acquire other companies ²⁶² Owners may only withdraw profits from an EIRL after year end inventories and balances have been completed and it is shown that the business has realized liquid profits ²⁶³	The two initial subscribers must be natural persons ²⁶⁴	-

¹⁵⁷ LGSM art. 260.

¹⁵⁸ See Law No. 16.060, Ley de Sociedades Comerciales art. 24, Noviembre 1, 1989, DIARIO OFICIAL [D.O.] (Uru.), <https://parlamento.gub.uy/documentosyleyes/leyes/ley/16060> [hereinafter LSC Uruguay] (stating that a commercial company is considered null if it is reduced to one owner); *Unidad de Apoyo al Sector Privado: Unipersonales*, MINISTERIO DE ECONOMÍA Y FINANZAS, <https://www.mef.gub.uy/5342/8/areas/unipersonales-Inversores,Empresas.html> (last visited Feb. 20, 2018), (noting that while Uruguay recognizes “*Empresas Unipersonales*,” which translates to “Individual Companies,” they are not considered to be legally separate from their owners, and the owner is fully responsible for all obligations of the company).

¹⁵⁹ LGSM cap. XIV.

¹⁶⁰ Law No. 19.550, Mar. 30, 1984, [25397] B.O. 2 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/25553/texact.htm> [hereinafter LGS Argentina].

¹⁶¹ Ley 27349 Argentina, *supra* note 22.

¹⁶² Law No. 19857, Autoriza el Establecimiento de Empresas Individuales de Responsabilidad Limitada, Enero 24, 2003, D.O. (Chile), <https://www.leychile.cl/Navegar?idNorma=207588> [hereinafter Law No. 19857 Chile].

¹⁶³ Law No. 20190 Chile, *supra* note 19.

¹⁶⁴ See CÓD. COM. (Costa Rica), *supra* note 11.

¹⁶⁵ *Id.*

¹⁶⁶ Law No. 32 Panama, *supra* note 126.

¹⁶⁷ See LSC Uruguay, *supra* note 158.

¹⁶⁸ Decreto por el que Se Reforman y Adicionan Diversas Disposiciones de la Ley General de Sociedades Mercantiles, *supra* note 25, at 1 (legislative history record showing the timeline of the legal amendment project).

¹⁶⁹ See LGS Argentina, *supra* note 160, art. 1 (by amendment).

¹⁷⁰ See generally Ley 27349 Argentina, *supra* note 22.

¹⁷¹ Law No. 19857 Chile, *supra* note 162 (providing dates and amendment dates at the top of the web page).

¹⁷² See Law No. 20190 Chile, *supra* note 19, art. 8 (providing amendment dates in margins).

¹⁷³ See CÓD. COM. (Costa Rica), *supra* note 11, tit. I, cap. VII (providing amendment dates). Note also that the ability of a *Sociedad Anónima* to survive as a unipersonal structure and the EIRL structure are both included in the original version of the law.

¹⁷⁴ While the law governing formation of Panamanian corporations states that two natural-person subscribers are required to incorporate in Panama, it is silent on whether all shares can be transferred to a single shareholder after incorporation. This is not listed as a reason for dissolution, and total restriction on transfer of shares is prohibited. See Law No. 32 Panama, *supra* note 126, arts. 1, 32; *id.* sec. IX. However, while Law No. 32 governing corporations was promulgated in 1927, 1966 is considered as the year that Panama first allowed for unipersonal limited liability entities. See Pablo Carlos Barbieri, *Las Sociedades Unipersonales en el Código Civil y Comercial*, SISTEMA ARGENTINO DE INFORMACIÓN JURÍDICA (2015), <http://www.sajj.gob.ar/pablo-carlos-bieri-sociedades-unipersonales-codigo-civil-comercial-dacf150286-2015-04-15/123456789-0abc-defg6820-51fcanirtcod>. However, Panamanian law does allow for anonymous holding of bearer shares after inscription, and this veil can only be lifted in cases such as money laundering. See Boudin, *supra* note 126, at 181. As such, it appears that this is the most likely answer as to where single-shareholder ownership of Panamanian SAs originated, as it does not appear to be from the text of the law directly. Due to the lack of registration of bearer shareholders, there would be no real way to know how many shareholders exist.

¹⁷⁵ Notably, Panama first directly allowed for a unipersonal limited liability entity in 1966 with the creation of the EIRL. See Law No. 24 Panama, *supra* note 128. However, this law was derogated in 2009. The new law no longer recognizes the EIRL and states that Panamanian LLC-equivalents must dissolve if they have less than two shareholders for more than sixty business days. See Law No. 4, *supra* note 128.

¹⁷⁶ LGSM art. 260.

¹⁷⁷ Brochure, Baker & McKenzie, Doing Business in Argentina 2017, at 23 (Mar. 2017), http://www.bakermckenzie.com/-/media/files/insight/publications/2017/04/bk_dbi_argentina_2017.pdf?la=en.

¹⁷⁸ FAQ, Ministerio de Producción, Abrí Tu Empresa SAS Más Fácil: Guía de Usuario 6, https://www.argentina.gob.ar/sites/default/files/sas_guia_usuario.pdf (last visited May 8, 2018).

¹⁷⁹ Law No. 19857 Chile, *supra* note 162, art. 1.

¹⁸⁰ Law No. 20190 Chile, *supra* note 19, art. 430; *see also* ¿Qué es una Sociedad por Acciones (SpA)?, MISABOGADOS.COM, (Nov. 24, 2014), <https://misabogados.com/blog/es/abogado-sociedad-por-acciones>.

¹⁸¹ *See* CÓD. COM. (Costa Rica), *supra* note 11, art. 104; *see also id.* art. 202 (stating that the SA is able to have only one shareholder after incorporation, but two are required to incorporate).

¹⁸² *Id.* art. 9.

¹⁸³ Law No. 32 Panama, *supra* note 126, art. 1; *see also supra* note 126 and accompanying text.

¹⁸⁴ LGSM art. 260.

¹⁸⁵ *See* LGS Argentina, *supra* note 160, art. 186 (describing information to be provided if a shareholder is a legal entity).

¹⁸⁶ FAQ, Ministerio de Producción, *supra* note 178, at 29. While other commercial entities may be the sole shareholder of an SAS, a different SAS may not be the sole shareholder. Ley 27349 Argentina, *supra* note 22, art. 39. Additionally, companies described in Article 299 of the Argentine General Company Law may not be the only shareholder of a SAS, nor may they have more than 30% ownership of a SAS.) *Id.*

¹⁸⁷ Law No. 19857 Chile, *supra* note 162, art. 1.

¹⁸⁸ *Registro de Empresas y Sociedades: Preguntas Frecuentes*, MINISTERIO DE ECONOMÍA FOMENTO Y TURISMO, <https://www.tuempresaenundia.cl/VD/PreguntasFrecuentes.aspx> (last visited May 8, 2018) [hereinafter *Chile Preguntas Frecuentes*].

¹⁸⁹ *See* CÓD. COM. (Costa Rica), *supra* note 11, art. 102 (referring only to “socios”—which translates to “partners”—as those who can own the business, while the EIRL statute makes clear it can only be natural persons).

¹⁹⁰ *Id.* art. 9.

¹⁹¹ *See Sociedades Anónimas: Preguntas Frecuentes*, *supra* note 126.

¹⁹² LGSM art. 260.

¹⁹³ LGS Argentina, *supra* note 160, art. 164.

¹⁹⁴ Ley 27349 Argentina, *supra* note 22, art. 34; Mario Eduardo Castro Sammartino, *Sociedad por Acciones Simplificada en la Argentina: Un Nuevo y Ágil Vehículo para Hacer Negocios*, CASTRO SAMMARTINO & PIERINI (May 7, 2017), <http://cspabogados.com.ar/sociedad-por-acciones-simplificada>.

¹⁹⁵ Law No. 19857 Chile, *supra* note 162, arts. 8, 12.

¹⁹⁶ Law No. 20190 Chile, *supra* note 19, art. 429; ¿Qué es una Sociedad por Acciones (SpA)?, *supra* note 180.

¹⁹⁷ CÓD. COM. (Costa Rica), *supra* note 11, art. 102; *Incorporación: Diferencia Entre S.A. y S.R.L.*, LANG & ASOCIADOS, <https://www.langcr.com/esp/diferencias.html> (last visited Apr. 21, 2018).

¹⁹⁸ CÓD. COM. (Costa Rica), *supra* note 11, art. 12.

¹⁹⁹ Law No. 32 Panama, *supra* note 126, art. 39.

²⁰⁰ *See Tu Empresa*, *supra* note 104.

²⁰¹ *See Constitución de Sociedades por Acciones*, ARGENTINA.GOB.AR, <https://www.argentina.gob.ar/constitucion-de-sociedades-por-acciones> (last visited Apr. 21, 2018) (offering instructions on how to incorporate a *Sociedad Anónima*, which is the first step in creating an SAU).

²⁰² *See Crear una Sociedad por Acciones Simplificada (SAS)*, ARGENTINA.GOB.AR, <https://www.argentina.gob.ar/crear-una-sociedad-por-acciones-simplificada-sas> (last visited Apr. 21, 2018).

²⁰³ *See Registro de Empresas y Sociedades*, MINISTERIO DE ECONOMÍA FOMENTO Y TURISMO, <https://www.tuempresaenundia.cl/VD/Default.aspx> (last visited Apr. 21, 2018); *Chile Preguntas Frecuentes*, *supra* note 188 (listing EIRLs and SpAs among the entities that can be constituted through the government web page).

²⁰⁴ *See Registro de Empresas y Sociedades*, *supra* note 203; *Chile Preguntas Frecuentes*, *supra* note 188.

²⁰⁵ *See Sociedad Digital*, MINISTERIO DE ECONOMÍA INDUSTRIA Y COMERCIO DE COSTA RICA, <https://costarica.eregulations.org/procedure/129/120?l=es> (last visited Apr. 21, 2018) (directing those who would like to incorporate a business to first go to a notary, and then the documents can be submitted to the Costa Rican government online). It appears to be the same website regardless of entity type.

²⁰⁶ *Resumen de Procedimiento*, MINISTERIO DE COMERCIO E INDUSTRIAS DE PANAMA, <https://panama.eregulations.org/procedure/122/12?l=es> (last visited Apr. 21, 2018) (detailing the steps to register a business in Panama).

²⁰⁷ *See ¿Qué es una Sociedad por Acciones Simplificada—SAS?*, *supra* note 25; *see also ¡Entró en Vigor la Ley para Crear Empresas en un Día y Sin Costo!*, *supra* note 63 (touting the one-day timeline in publication for entrepreneurs).

²⁰⁸ *See Constitución de Sociedades por Acciones*, *supra* note 201; *see also Ease of Doing Business in Argentina*, DOING BUS., <http://www.doingbusiness.org/data/exploreconomies/argentina#starting-a-business> (last visited May 8, 2018) (while there is no official advertised time, the World Bank notes that the average time to open a business entity with a similar procedure in Argentina is 24 days).

²⁰⁹ FAQ, Ministerio de Producción, *supra* note 178, at 5.

²¹⁰ See *Tu Empresa en un Día*, CHILE ATIENDE (Nov. 9, 2015), <https://www.chileatiende.gob.cl/fichas/ver/21409>. The official webpage is titled “Your Business in a Day” and appears to be available for both entity types. *Id.*; see also *Crear una Empresa*, *supra* note 145.

²¹¹ *Sociedad Digital*, *supra* note 205. The same instructions appear available for both entity types. *Id.*

²¹² *Resumen de Procedimiento*, *supra* note 206.

²¹³ Including this metric is intended to capture differences between any new laws allowing for relatively quick entity formation and the status quo in the country.

²¹⁴ See *Ease of Doing Business in Mexico*, *supra* note 29 (time to incorporate a *Sociedad Anónima*).

²¹⁵ *Ease of Doing Business in Argentina*, *supra* note 208 (time to incorporate a *Sociedad de Responsabilidad Limitada*).

²¹⁶ *Ease of Doing Business in Chile*, DOING BUS., <http://www.doingbusiness.org/data/exploreeconomies/chile#starting-a-business> (last visited Apr. 21, 2018) (time to incorporate a *Sociedad Anónima*).

²¹⁷ *Ease of Doing Business in Costa Rica*, DOING BUS., <http://www.doingbusiness.org/data/exploreeconomies/costa-rica#starting-a-business> (last visited Apr. 21, 2018) (time to incorporate a *Sociedad Anónima*).

²¹⁸ *Ease of Doing Business in Panama*, DOING BUS., <http://www.doingbusiness.org/data/exploreeconomies/panama#starting-a-business> (last visited Apr. 21, 2018) (time to incorporate a *Sociedad Anónima*).

²¹⁹ *Ease of Doing Business in Uruguay*, DOING BUS., <http://www.doingbusiness.org/data/exploreeconomies/uruguay#starting-a-business> (last visited Apr. 21, 2018) (time to incorporate a *Sociedad Anónima*).

²²⁰ See LGS cap. XIV; *id.* art. 265 (stating that subscribed share capital must be paid up within a year of incorporation).

²²¹ LGS Argentina, *supra* note 160, arts. 11, 187 (stating that at the time of conversion into an SAU, all share capital must be paid in).

²²² *XE Currency Converter: ARS to USD*, XE, <http://www.xe.com/currencyconverter/convert/?Amount=100000&From=ARS&To=USD> (last visited Apr. 21, 2018).

²²³ Ley 27349 Argentina, *supra* note 22, art. 40.

²²⁴ FAQ, Ministerio de Producción, *supra* note 178, at 5.

²²⁵ *XE Currency Converter: ARS to USD*, *supra* note 222.

²²⁶ See *Preguntas Frecuentes*, SERVICIO DE IMPUESTOS INTERNOS, http://www.sii.cl/preguntas_frecuentes/catastro/001_009_1955.htm (last visited Apr. 21, 2018); *Chile Preguntas Frecuentes*, *supra* note 188 (noting that while there is no initial minimum capital requirement, the amount should be outlined in the formation documents).

²²⁷ See *Sociedad por Acciones*, INICIA TU PYME, <https://iniciatupyme.cl/sociedad-por-acciones> (last visited Apr. 21, 2018) (noting that the amount of share capital is fixed in the incorporation documents).

²²⁸ See FAQ, Mossack Fonseca, Costa Rica Sociedad Anonima (S.A.): Preguntas Frecuentes (Nov. 2014), http://www.mossfon.com/wp-content/uploads/2014/11/CR_SA_preguntas.pdf.

²²⁹ However, at least 25% of the share capital must be paid up at the time of incorporation. CÓD. COM. (Costa Rica), *supra* note 11, art. 104(b).

²³⁰ See *Sociedades Anónimas: Preguntas Frecuentes*, *supra* note 126 (noting that while the minimum share capital is \$10,000 USD, this does not have to be paid in cash, and can represent assets, goods, intangibles, etc.); *Sociedades Anonimas en Panama*, *supra* note 126 (noting that the share capital for stocks issued is assumed paid, whether or not money enters the corporation); *Panamá—Constituir una Corporación*, FORMACOMPANY WORLDWIDE INCORPORATIONS, <https://www.formacompany.com/es/panama/panama-company-formation.php> (last visited Apr. 21, 2018) (noting that \$10,000 USD is the standard minimum capital); see also Boutin, *supra* note 126, at 180 (noting that this is a Public Registry requirement rather than from Panama’s Law No. 32).

²³¹ *¿Qué es una Sociedad por Acciones Simplificada—SAS?*, *supra* note 25.

²³² *Constitución de Sociedades por Acciones*, *supra* note 201 (noting that this is just the cost of the initial formation of the *Sociedad Anónima* and there may be additional costs for the transformation to an SAU).

²³³ *XE Currency Converter: ARS to USD*, *supra* note 222.

²³⁴ FAQ, Ministerio de Producción, *supra* note 178, at 5 (noting that this amount counts towards the initial share capital requirement).

²³⁵ *XE Currency Converter: ARS to USD*, *supra* note 222.

²³⁶ See *Chile Preguntas Frecuentes*, *supra* note 188.

²³⁷ See *Tu Empresa en un Día*, *supra* note 210.

²³⁸ *Sociedad Digital*, *supra* note 205 (appearing to apply to both entity types).

²³⁹ XE Currency Converter: CRC to USD, XE, <http://www.xe.com/currencyconverter/convert/?Amount=236%2C916.08&From=CRC&To=USD> (last visited Apr. 21, 2018).

²⁴⁰ See *Resumen de Procedimiento*, *supra* note 206; *Convert Panamanian Balboa to United States Dollar (PAB to USD)*, MONEY CONVERTER, <https://themoneyconverter.com/PAB/USD.aspx> (last visited Apr. 21, 2018). Note that the Panamanian balboa is pegged to the U.S. dollar at a 1:1 ratio. *Id.*

²⁴¹ LGSM art. 260

²⁴² XE Currency Converter: MXN to USD, XE, <http://www.xe.com/currencyconverter/convert/?Amount=5%2C000%2C000&From=MXN&To=USD> (last visited Apr. 21, 2018).

²⁴³ See generally LGS Argentina, *supra* note 160.

²⁴⁴ See generally Ley 27349 Argentina, *supra* note 22.

²⁴⁵ See Law No. 19857 Chile, *supra* note 162, arts. 14, 15 (listing no maximum earnings amount in the lists of reasons why an EIRL must transform or dissolve).

²⁴⁶ See generally Ley 27349 Argentina, *supra* note 22.

²⁴⁷ See generally Cód. COM. (Costa Rica), *supra* note 11, cap. VII.

²⁴⁸ See generally *id.* cap. II.

²⁴⁹ See generally Law No. 32 Panama, *supra* note 126.

²⁵⁰ This metric is intended to provide a comparison between the cost of entity formation and the income in the country, as direct comparison between the countries alone may not provide sufficient perspective on cost.

²⁵¹ *Ease of Doing Business in Mexico*, *supra* note 29.

²⁵² *Ease of Doing Business in Argentina*, *supra* note 208.

²⁵³ *Ease of Doing Business in Chile*, *supra* note 216.

²⁵⁴ *Ease of Doing Business in Costa Rica*, *supra* note 217.

²⁵⁵ *Ease of Doing Business in Panama*, *supra* note 218.

²⁵⁶ *Ease of Doing Business in Uruguay*, *supra* note 219.

²⁵⁷ LGSM art. 260.

²⁵⁸ LGS Argentina, *supra* note 160, art. 1.

²⁵⁹ See *Crear una Sociedad por Acciones Simplificada (SAS)*, *supra* note 202; Eugenia Bustamante, *Sociedad por Acciones Simplificada: Una Figura Ideal para los Emprendedores del Agro*, CLARIN RURAL (June 9, 2017, 9:38 AM), https://www.clarin.com/rural/sociedad-acciones-simplificada-figura-ideal-emprendedores-agro_0_r1Z6bZLZW.html.

²⁶⁰ Law No. 19857 Chile, *supra* note 162, art. 2.

²⁶¹ See *Chile Preguntas Frecuentes*, *supra* note 188 (noting, however, that people are free to have more than one EIRL).

²⁶² Cód. COM. (Costa Rica), *supra* note 11, art. 9.

²⁶³ *Id.* art. 11.

²⁶⁴ Law No. 32 Panama, *supra* note 126, art. 1 (indicating that the initial subscribers must be adults); see also *Sociedades Anónimas: Preguntas Frecuentes*, *supra* note 126; *Sociedades Anonimas en Panama*, *supra* note 126.