

Legal Requirements, Essential Compliance of the Entrepreneur

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ABSTRACT

The main objective of this investigation is the establishment of the most important points regarding the legal requirements that a Business Plan must contain; legal compliance in a business idea goes beyond meeting basic requirements, such as registering the company in the taxpayer register or carrying out a constitutive act; Emphasis must be placed on complying with legal aspects of benefit to the parties related to the venture, such as registering workers with Social Security, drawing up individual or collective contracts, granting basic benefits and, if possible, additional work incentives. to salary...

In Mexico, Small and Medium Enterprises (SMEs) represent 51% of the Gross Domestic Product (GDP), and the development of 72% of the generation of jobs, for this reason it is of vital importance that these businesses have the legal requirements in rule, so that this allows them to adapt and generate new business training strategies and thus contribute in a relevant way to the economic development of the country, fully fulfilling their commitments both with the parties involved, workers and employees and with society in general, through trade of goods and services and the corresponding payment of taxes and contributions related to their economic and commercial activities.

KEYWORDS: *Business Plan, Legal Requirements, Compliance*

I. INTRODUCTION

In many countries the participation of micro, small and medium-sized enterprises represents a large percentage of their Gross Domestic Product (GDP), the economic spillover and the engine of it is born in the decision to form a company, to generate direct and indirect sources of employment that ultimately become the economy of a country. The GEM (2021) defines entrepreneurship as: "any attempt to create new businesses or new enterprises, such as self-employment, a new business organization or the expansion of an existing business, by an individual, a team of individuals or an established business".

The economy is based on a percentage of 36.38% of adults aged 18 to 64 who perceive opportunities, 50.07% who believe they have the knowledge and skills to undertake, 28.40% with fear of failure and 50.67% who see entrepreneurship as a good career choice.

In advanced semesters, students must all take a subject called Development of Entrepreneurs, which

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seeks to generate entrepreneurship in students by developing skills necessary for the start of a company. However, it is up to each university student to make the decision to form a company.

Being an entrepreneur, not only offers benefits to those who undertake, but also supports the same community in which they are inserted, with the creation of jobs, promotion of the economy and helping to "minimize the adverse and structural factors that force people to leave their country of origin" UNESCO [3], within this same document in goal 4.4 it is established by 2030 to increase the number of young people and adults Trained... to access employment, decent work and entrepreneurship, further highlighting the importance it has.

The economy is based on resources or based on innovation, in the case of Mexico according to the GEM [1], for point 1 there is a percentage of 36.38% of adults from 18 to 64 years old who perceive

opportunities, 50.07% who believe they have the knowledge and skills to undertake, 28.40% with fear of failure and 50.67% who see entrepreneurship as a good career choice.

II. THEORETICAL AND CONCEPTUAL FRAMEWORK

Filion, Cisneros and Mejía-Morelos (2011) [2] make a distinction between the entrepreneurial role and the small business owner. They also highlight that many people have an entrepreneurial role without having created a company and recognize that at the end of the 1980s there was a change that placed entrepreneurship as a subject of study in almost all areas of knowledge. In this way, the entrepreneur is a "visionary", he is a creative person with the ability to establish and achieve objectives who maintains a high level of awareness of the environment in which he lives, using it to detect business opportunities. This is how they consider that a Business Model must be developed and explained by the creators of the idea, said business model must be seen as a conceptualization of the offer, a set that shows, specifically, how the money is going to be recovered. and, at the same time, how the exchange relations with the business participants are going to be developed. (p.28)

In the Legal Manual of the Entrepreneur (2021) [3] José Roble Flores Director of the Free Law School of Monterrey comments that one of the justifications in the business field for not respecting the Law is excessive regulation, which sometimes makes timely compliance with all applicable standards, is impossible. And that, although this is an argument that could serve as an excuse, it in no way authorizes not complying with the applicable regulations.

As mention Filion, L.J.; Cisneros, L.F. and Mejía-Morelos, J.H. (2021) [2] (p. 47) point out that every business that starts must comply with a series of procedures to be legally established.

For this, it is necessary to consider:

- The number of partners that will participate.
- Social capital to invest.
- Legal obligations that will be contracted, such as its formal constitution, and the respective fiscal and labor commitments.

The business plan must also specify:

- Chosen legal personality.
- List of the necessary procedures according to the line of business, including where they are carried out, necessary paperwork, cost and duration; In addition, it must specify who will be responsible for carrying them out.

Some legal aspects to consider are, among others:

- Registration before the tax administration.
- Sanitary licenses.
- Obtaining patents, trademarks, industrial designs, registration of names or logos.
- Registrations before local, regional or national organisms.
- Personnel records before the necessary instances and before possible public agencies (according to the corresponding provisions of law).
- Land use permit or necessary licenses.
- Registration before the Ministry of Health or equivalent according to the type of company.

The economy is based on resources or based on innovation, in the case of Mexico according to the GEM [4], for point 1 there is a percentage of 36.38% of adults from 18 to 64 years old who perceive opportunities, 50.07% who believe they have the knowledge and skills to undertake, 28.40% with fear of failure and 50.67% who see entrepreneurship as a good career choice.

However, some areas scored less favourably. Of particular note here is the condition Commercial and Professional Infrastructure which received a 5.0 score, second lowest among GEM Level A economies [5]. This reflects a lack of available and affordable Access to the professional services (such as legal and financial services) needed to grow a new business.

To address this constraint on entrepreneurship, policymakers can look at licensing to determine if a scarcity of professionals are creating an unfair pricing market. Or they can explore the creation of services networks, where entrepreneurs can combine resources to obtain professional services collectively rather than on an individual basis.

To execute his business vision, the entrepreneur will require help from collaborators. Whether they are operators, salespeople, administrators or executives, the people who make up a company constitute its backbone. For this reason, the entrepreneur must ensure that all labor relations are maintained in an orderly manner and in accordance with applicable legislation.

The Federal Labor Law (LFT) [7] defines an employment relationship as the provision of personal work subordinated to a person, through the payment of a salary.

The agreement by which a person, called a worker, agrees to provide a subordinate personal job to another, called an employer, by paying a salary, is known as an Individual Employment Contract.

One of the first stages in the path of the entrepreneur consists of the creation of a company. This will allow you to enjoy certain benefits that would be out of your reach as a natural person.

When creating a company, it is indicated in the Legal Manual of the Entrepreneur [3], the responsibility of its owners is limited exclusively to the amount of their contributions. This means that, except in exceptional cases, the entrepreneur would not respond with his personal assets with respect to any debt or obligation contracted by the company.

It is also notable to emphasize that another of the benefits of creating a company has to do with its tax treatment. Before the tax authorities, companies are considered independent entities. Therefore, they pay their own taxes. The Income Tax rate applicable to corporations in Mexico is generally lower than that applicable to individuals.

When partnering with third parties, partnerships also offer some advantages. The law grants enough flexibility to its owners in the elaboration of the Corporate Bylaws, which are the internal rules of any company. This allows the rights and obligations of all shareholders to be clearly defined, in such a way that they feel comfortable with the management of the company.

There are still more benefits of companies, such as: their perpetual existence, their greater access to sources of financing, among others. For this reason and to give more formality to your business, the entrepreneur is recommended to establish a company as a vehicle to develop your project.

The legal figures recognized by law and their characteristics are related to the fact that a company is nothing more than an entity with its own legal personality, different from that of its owners. You can own property, enter into contracts, and sue or be sued on your own behalf.

However, there are different types of companies, each with different characteristics. The entrepreneur must know its particularities to determine which is the most appropriate for his situation.

Mexican law recognizes nine types of companies. [5] Of these, the most common are the Limited Liability Company (SRL), the Public Limited Company (SA), the Investment Promotion Company (SAPI) and the Simplified Stock Company (SAS).

III. DISCUSSION AND PROPOSALS FOR SOLUTION

It is important to mention that the creation of the Sociedad por Acciones Simplificadas (SAS) was a great achievement of the Association of

Entrepreneurs of Mexico (ASEM) [3] that in the search to improve the conditions in which business is undertaken and done in Mexico. It is mentioned that to make it possible, it had the support of the Tec de Monterrey School of Government and Public Transformation, as well as the Senate of the Republic and representatives of the Ministry of Economy. This type of company is the first type of commercial company in the country that can be created online, free of charge and from a single partner. Currently there are more than 36,000 SAS companies, of which 70% are sole proprietorships and 40% are managed by women.

The steps to establish an SRL, SA or SAPI are practically identical and involve the participation of a notary public, that is, a Notary or Public Broker. Therefore, one of the great advantages of the constitution of a SAS is that it does not require the participation of a notary public and can be carried out, in its entirety, through the electronic system in charge of the Ministry of Economy (SE) [8].

Therefore, although the constitution of a SAS is faster and less expensive, the electronic system in charge of the SE only allows the inclusion of certain model clauses within the Articles of Association of a SAS. This implies less flexibility in the definition of the rights and obligations of its shareholders.

In conclusion, in order to establish a SAS, the SE considers the following points:

- Have your advanced electronic signature certificate, as a natural person, issued by the SAT.
- Obtain authorization for the use of the desired company name, issued by the SE.
- Enter the electronic constitution system in charge of the SE.
- Sign the terms and conditions that appear on the portal.
- Capture the information requested in the portal.
- Select the clauses of the Corporate Bylaws that the SE makes available on the portal.
- Electronically sign the social contract.
- Electronic registration of the social contract in the Public Registry of Commerce (RPC).
- Digital generation of the company's RPC registration form.
- Finally, the existence of the SAS will be demonstrated with the social contract and the registration form in the RPC.

Finally, it is possible to determine that compliance with Legal Requirements and Social Responsibility goes beyond simply complying with what government and tax authorities request or demand from entrepreneurs; It is a commitment to society and the parties involved, partners, employees and

collaborators, among others. An entrepreneur must see beyond his own benefit and focus on improving life, not his or her and their families; It is a social and fraternal commitment, since a company becomes a formal family, it even becomes an absorbing family, which requires 24/7 attention from those involved.

It is also imperative that the authorities create access routes to information on the requirements to start up a company in the short term and not that it is an impregnable labyrinth of procedures and requirements that inhibit the generation and proper compliance of the commitments of the newly created venture.

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