

Educational Institutions

A Legal and Regulatory Handbook
for Setting up Overseas

Consulting Editor **Mark Abell**

Consulting Editor

Mark Abell

Managing director

Sian O'Neill

Educational Institutions: A Legal and Regulatory Handbook for Setting up Overseas
is published by

Globe Law and Business Ltd
3 Mylor Close
Horsell
Woking
Surrey GU21 4DD
United Kingdom
Tel: +44 20 3745 4770
www.globelawandbusiness.com

Printed and bound by CPI Group (UK) Ltd, Croydon CR0 4YY

Educational Institutions: A Legal and Regulatory Handbook for Setting up Overseas

ISBN 9781787420878
EPUB ISBN 9781787420885
Adobe PDF ISBN 9781787420892
Mobi ISBN 9781787420908

© 2018 Globe Law and Business Ltd except where otherwise indicated.

All rights reserved. No part of this publication may be reproduced in any material form (including photocopying, storing in any medium by electronic means or transmitting) without the written permission of the copyright owner, except in accordance with the provisions of the Copyright, Designs and Patents Act 1988 or under terms of a licence issued by the Copyright Licensing Agency Ltd, 6–10 Kirby Street, London EC1N 8TS, United Kingdom (www.cla.co.uk, email: licence@cla.co.uk). Applications for the copyright owner's written permission to reproduce any part of this publication should be addressed to the publisher.

DISCLAIMER

This publication is intended as a general guide only. The information and opinions which it contains are not intended to be a comprehensive study, nor to provide legal advice, and should not be treated as a substitute for legal advice concerning particular situations. Legal advice should always be sought before taking any action based on the information provided. The publishers bear no responsibility for any errors or omissions contained herein.

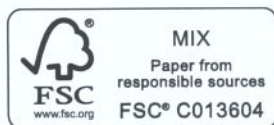


Table of contents

Preface _____ 7

Mark Abell
Bird & Bird

Section A

The market viability of _____ 9

English-medium K-12 international schools

Richard Gaskell
Diane Glass
ISC Research

Challenges of managing _____ 15 **an educational business and building infrastructure**

Mark Abell
Bird & Bird
Edoardo Monopoli
Baseline

Launching an international _____ 21 **growth strategy**

Mark Abell
Bird & Bird

IP issues _____ 27

Mark Holah
Bird & Bird

Data protection issues _____ 37

James Mullock
Bird & Bird

Employment issues _____ 47

Pattie Walsh
Stephanie Wong
Bird & Bird

Transnational education _____ 67

John Shaw
Cushman & Wakefield
Stephanie Terreni Brown
Clean Water Wave; Cushman &
Wakefield

Tax issues _____ 75

David Field
Grant Thornton UK LLP

Structural options – an _____ 99 **overview of the international growth of schools and universities**

Mark Abell
Bird & Bird

Section B

Brazil _____ 113

Luiz Henrique O do Amaral
Luciana Bassani
Dannemann Siemsen Advogados

China _____ 125

Sven-Michael Werner
Bird & Bird

Hong Kong	135	Nigeria	221
Hank Leung		Nick Green	
Pattie Walsh		Bird & Bird	
Bird & Bird		Osayi Ogbeta	
		Inam Wilson	
		Templars	
India	151	Singapore	227
Nipun Gupta		Ling Yee Neo	
Bird & Bird		Lorraine Tay	
Divya Sharma		Bird & Bird ATMD	
DBS Law			
Indonesia	161	Thailand	243
Sherroy Ong		Nick Green	
Bhredipta C Socarana		Bird & Bird	
Risti Wulansari		Anake Rattanajitbanjong	
K&K Advocates		Supasit Saypan	
		Chinachart Vatanasuchart	
		Tilleke & Gibbins International Ltd	
Japan	179	United Arab Emirates	257
Mark Abell		Melissa Murray	
Bird & Bird		Bird & Bird	
Hitomi Iwase			
Hideki Katagiri		United States	265
Daisuke Morimoto		Madeleine G Kvalheim	
Nishimura & Asahi		Patricia B McMurray	
		Christopher G Morris	
		John M Scannapieco	
		Baker Donelson	
Korea	187	Vietnam	279
Han Ah Lee		Shelley Nadler	
Hwang Mok Park		Bird & Bird	
		Waewpen Piemwichai	
		Tilleke & Gibbins	
Malaysia	195	About the authors	287
Mei Quin Chen			
Lin Li Lee			
May Fenn Lim			
Joe Yee Yap			
Tay & Partners			
Mexico	215		
Shelley Nadler			
Bird & Bird			
Silverio Sandate			
Von Wobeser y Sierra			

Mexico

Shelley Nadler

Bird & Bird

Silverio Sandate

Von Wobeser y Sierra

1. Introduction

In Mexico the provision of educational services is considered to be a public service. The Constitution of Mexico establishes that every individual has the right to access educational services and sets out the relevant guidelines and goals. As a consequence, governmental authorities are involved in the regulation of the provision of educational services.

The main provider in Mexico remains the government. This does not mean that individuals and organisations are not allowed to provide educational services, but even when they do so the services are still considered to be public services, and on that basis must follow the guidelines and programmes established by the Mexican government.

Given the foregoing, it could be said that the Mexican market has historically not been very attractive to foreign schools or universities. Currently there are no foreign schools or universities established directly in Mexico.¹ However, this does not mean that foreign organisations are absent from the provision of educational services in Mexico; merely that foreign investment can only be found in existing Mexican private schools or universities.^{2,3}

The most significant foreign investment is related to private Mexican universities or other private organisations providing medium level or technical educational services. The students attending these private universities or organisations are diverse, with different reasons for preferring them over governmental providers.

2. Regulation

The regulatory system establishes one group of provisions for public educational services and another for private.

There are no regulations specifically for foreign schools and universities. In line with the above division, foreign schools and universities are considered private organisations and will therefore be required to observe the same provisions that

1 Germán Álvarez, "The Transnational Superior Education in Mexico", RIMAC (Network of Academic and Scientific Internationalization and Mobility), available at: www.redalyc.org/articulo.oa?id=87314214019.

2 Roberto Rodríguez, "Foreign Direct Investment in Superior Education. The Mexican Case", in *Higher Education Journal*, No 130, available at: <http://publicaciones.anui.es.mx/revista/130/2/2/es/inversion-extranjera-directa-en-educacion-superior-el-caso-de-mexico>.

3 Roberto Rodríguez, "Present and future of transnational universities in Mexico", available at: http://firgoa.usc.es/drupal/files/RRG_M%C3%A9xico.pdf.

private Mexican individuals or organisations must observe in order to provide educational services.

Although there is no specific regulation of foreign schools and universities, if the percentage of foreign investment in a Mexican organisation providing educational services exceeds 49%, then the investment must be authorised by the National Commission of Foreign Investments.

The regulatory system provides for the classification of education into three levels:

- *basic* – preschool, elementary and junior high school (*secundaria*);
- *medium* – baccalaureate or equivalent (high school), professional/technical education; and
- *superior* – beyond baccalaureate or equivalent, such as university, postgraduate, master's and doctorate.

There are other types of educational services, such as for individuals with special needs and for adults, but those mentioned above are of most interest for purposes of this chapter.

The basic level attracts most intervention from government, with many regulations that private educational service providers must follow. For example, the educational programmes for this level are established by the government. Private sector service providers are permitted to add programmes or improvements, but as a minimum they must follow the official programme. Consequently, for the private sector it is easier to develop comparative advantages over other service providers at the medium and superior levels.

Provision of educational services at the basic level requires government approval. For services at medium or superior levels in the private sector, authorisation is not a requirement but curricula must be approved.

The regulatory system for education in Mexico has a federal basis which might be considered complex – intervention occurs at all levels of government, namely federal, state and local, the detailed provisions being governed by the General Education Law. Federal and state authorities have different and exclusive powers but at the same time there are concurrent powers at federal, state and local levels. As a consequence, the different levels of government have to interact among themselves on a subordinated as well as a coordinated basis. State and local authorities are entitled to issue provisions in the exercise of their powers, but these provisions must be in accordance with the Constitution and the General Education Law.

In general, the exclusive powers of the federal government are related to the creation of systems and guidelines for the functioning of the education system in accordance with guidelines established by the Constitution. Exclusive powers at state level are related to the implementation of said systems and guidelines within state jurisdictions and in accordance with the particularities of the state.

Concurrent powers include the provision of educational services at the federal, state and local government level. These services include the promotion of investigation and reading, the practice of sports, evaluation and professional development of those teaching at public schools.

There is no specific requirement that schools provide teaching in the Spanish

language. The only provision in the General Education Law relating to language is that public or private educational services must seek to promote the knowledge of the linguistic plurality of Mexico and respect for the linguistic rights of indigenous people. Speakers of indigenous languages will have access to compulsory education in their own language and in Spanish.

With regard to state education laws the situation is similar. There is no requirement regarding the language that schools or universities must teach in, but there are provisions which stipulate that education services must seek to promote the Spanish language without the impairment of linguistic diversity.

Regarding the curriculum, the most regulated level is the basic, since the educational programmes for this level are determined by central government and must be applied throughout Mexico. For the other educational levels the General Education Law provides that educational content must be defined by plans and programmes that determine:

- the acquisition of knowledge, skills and capacities corresponding to the relevant educational level;
- the principal content, organised in learning units;
- the critical sequences to be observed between learning units; and
- evaluation criteria and procedures.

Regarding real estate, the General Education Law indicates that private educational services must be provided in facilities that meet the appropriate hygiene, safety, educational and accessibility conditions. More specific provisions are contained in the General Law of the Educational Physical Infrastructure, which establishes guidelines that must be observed in connection with the construction, maintenance, rehabilitation, reinforcement and reconstruction of buildings and facilities destined to be used for the provision of educational services in Mexico.

Among other provisions, a building used for the provision of educational services must have the necessary licences and operating notices. Also, where appropriate, certification must be obtained to ensure compliance with the requirements of construction, equipment etc that are mandatory for each type of building in accordance with local, state and federal regulations.

3. Intellectual property law

3.1 Trademarks

Private educational service providers are able to apply for registration of the marks and slogans they use to identify and promote their educational services. Trademark applications are filed in connection with the services themselves, as well as products used by students such as uniforms and stationery.

Intellectual property rights over marks relating to educational services can be enforced in the same way as those for other goods or services. If, following registration of a mark or slogan, a third party uses an identical or confusingly similar mark without permission, an infringement action can be lodged with the Mexican Institute of Industrial Property (IMPI) by the owner of the trademark.

Interestingly, although there are no foreign schools or universities established directly in Mexico, the IMPI's database evidences trademark registrations protecting the names of important universities of other countries. These registrations may be the result of the indirect involvement of those universities within the Mexican territory in special courses, projects or workshops in collaboration with Mexican universities, their purpose being to prevent third parties using the marks without authorisation in order to mislead consumers.

3.2 Copyright

Copyright protection might also be available to protect the content of materials used by teachers to carry out their duties. Some schools and universities create or edit their own books or other tools for use by students and professors. In this situation, although registration with the National Copyright Institute (INDAUTOR) is not necessary to obtain copyright protection, it might be advisable.

Depending on the nature of any potential copyright infringement by a third party, copyright can be enforced by an infringement action before IMPI or a civil claim for damages and loss of profits; and even criminal liability can be alleged by filing a denouncement.

3.3 Trade secrets

The Industrial Property Law in Mexico establishes that to constitute a trade secret, information must have an industrial application and must relate to the nature, characteristics or purposes of a product, production method or process, or to means of distributing or marketing products or rendering services. Due to the industrial application requirement it is not usual that educational organisations have to consider trade secrets.

4. Data protection

Mexican data protection law does not contemplate any specific provisions or regulations with which schools must comply. The transfer of personal data is regulated by Mexican data protection law in general, as follows:

- The data controller is required to have, at all times, a privacy notice specifying the data to be collected, purposes of the data treatment/processing, and rights that can be exercised by the data subjects in connection with their personal data.
- Transfers of personal data from the data controller to another entity (other than the data processor) must be expressly indicated within the privacy notice, stating the third party who will receive the personal data and the purposes of said data transfer.
- The third party receiving the personal data transferred by the data controller must observe all the obligations contained in the data controller's privacy notice.
- The data subjects can refuse the transfer of their personal data; however, they must expressly inform the data controller of their refusal. Should the data subjects not expressly inform the data controller of their refusal, it will be presumed that they have granted their consent.

- Where the data transfer exclusively takes place between the data controller and the data processor it is not necessary to obtain the data subject's consent. However, it is considered good practice to inform the Mexican Privacy and Data Protection Authority of such situations.

5. Tax

Mexican income tax law stipulates that organisations providing educational services with authorisation, or officially recognised studies under the terms of the General Education Law, are not liable for payment of income tax, provided that they are considered as institutions authorised to receive deductible donations.

6. Employment law

There are no particular restrictions or requirements established in Mexican federal labour law relating to foreign teachers. Federal labour law contains specific provisions regulating the services rendered by academic and administrative staff in autonomous public universities and superior education institutions, and teaching services in the private sector are not considered to be a special type of work or employment.

In this context it is worth noting that federal labour law provides that in any company or establishment, at least 90% of employees must be Mexican nationals.

7. Anti-bribery/money laundering

There is no particular legislation or code of practice relevant to fraud, anti-corruption or money laundering in Mexico that directly addresses people involved in the provision of educational services.

8. Current developments

The latest reform to the General Education Law was made earlier this year and was published in the Mexican *Official Gazette* on 22 March 2016. The main purpose of the reform was to facilitate academic mobility so that studies carried out abroad, outside the Mexican national education system, can acquire official validity in Mexico and qualify as superior level education for students returning to Mexico.