

## Are Your Purchase Orders Valid in Mexico?

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Generally speaking, contracts in Mexico are more formalistic than in the U.S. and issues arise if the required form is not respected. U.S. companies doing business in Mexico through Mexican subsidiaries are well advised to carefully examine the terms of the POs they are using in Mexico to ensure they comply with Mexican law, and ensure that any individuals signing the POs are duly authorized to do so by valid powers of attorney.

Many U.S. companies doing business in Mexico expect to be able to issue POs on the same terms and conditions as in the US. Depending on which company issues the PO and what law is selected to govern the transaction, the terms of the PO issued may not be valid or enforceable in Mexico.

Many U.S. purchase orders, particularly in the automotive sector, do not require a signature to be effective. A PO is deemed accepted upon the commencement of performance, performance, or shipment of the goods. A PO issued by a U.S. company normally states that U.S. law governs the transaction. If the issuer of the PO is a U.S. company and the Mexican supplier accepts these terms and certain conditions are met, then a Mexican court would typically agree that U.S. law governs the contract and the PO terms prevail. The situation is different, however, if the PO is issued by a Mexican subsidiary to a Mexican counterpart, even if the goods are to be shipped directly to the U.S market. A problem arises if the U.S. company merely translates its PO into Spanish and expects the terms to prevail under Mexican law.

Under Mexican law, purchase orders or any other contract require signature by a duly authorized representative of each party. A contract with no signature or without a valid signature, is not valid in Mexico and therefore not enforceable. To be valid, the signature must be from a representative who has a proper power of attorney. Powers of attorney in Mexico are given for specific purposes and must be notarized before a Mexican notary. For example, a payroll clerk would have a power of attorney to issue payroll checks. This power of attorney would not authorize the clerk to sign POs. Contracting parties in Mexico normally require the other party to provide evidence of the power of attorney held by the person signing.

Another issue arises if U.S. citizens sign contracts that are subject to Mexican law. A U.S. citizen working in Mexico may only be granted a power of attorney to sign on behalf of the Mexican entity if he or she has an FM3, or Mexican residence permit. Although it is common practice in many border operations to have U.S. managers cross the border every day to work in Mexico, under Mexican law they are not permitted to have a power of attorney to sign on behalf of the Mexican operation, and any Mexican contract signed by a U.S. national not resident in Mexico is not valid.

Payment terms in a typical U.S. PO are also not valid in Mexico. Many U.S. POs provide that title passes to the buyer upon shipment or inspection by the customer, regardless of when payment is made. Under Mexican law, title passes only upon payment in full for the goods sold, and in the event of a dispute under Mexican law the buyer would not have title to goods not yet paid for. While this may seem a moot point if the goods are already shipped, either to a Mexican or U.S. location, contract remedies would be available for the Mexican supplier under a Mexican PO.

If you have questions or need assistance, please contact your Miller Canfield lawyer or Michele M. Compton, +1.313.496.7916, [compton@millercanfield.com](mailto:compton@millercanfield.com), or Richard A. Walawender, +1.313.496.7628, [walawender@millercanfield.com](mailto:walawender@millercanfield.com).