

# Corporate Governance Model for Customs Agency in Accordance with Federal Customs Law Article 167-D in Mexico

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## **ABSTRACT**

Customs agencies operate under the protection of a customs agent patent as a natural person, and there is a reform to the Federal Customs Law published in the Official Gazette of the Federation on June 25, 2018, establishing the Customs Agency model so that they can operate under the concept of "Customs Agency Patent", conceptualized as a legal person. The objective of the new modifications of the Federal Customs Law in article 167-D establishes the promotion of customs clearance of merchandise for third parties in different customs regimes. Maintaining the continuity of the operations of the Customs Agencies against the risk of extinction due to the lack of the person who holds the Customs Patent, regardless of the reason or cause, through internal strategies of Corporate Governance practice models for compliance with regulations applicable according to the challenges of competitiveness in Foreign Trade and Customs. This article presents a methodological intervention proposal as part of a Master thesis in Administration project at the Tecnológico Nacional de Mexico campus Tijuana.

**Keywords:** Customs Patent, Customs Agency, Customs Agent

## INTRODUCTION

The Mexican regulations published in the Official Gazette of the Federation (DOF in Spanish, 2018), on the operation of the customs agent, has generated a reflection and concern about the possibility that no customs agency, continue to dispatch its operations, under the figure of a customs agency patent, if it does not comply with what is established in the scheme offered by the figure of the customs agency patent incorporated in the Customs Law. Therefore, it is necessary to seriously consider obtaining the company's patent to incorporate elements of operational validity. Customs clearance of goods on behalf of third parties is currently carried out under the figure of the Customs Agent as a Natural Person, and with the new amendment of the Law, this offers the possibility of carrying out customs clearance under the figure of a Legal Person. Federal labor law has implicated the labor processes of the Labor Agencies through insourcing mechanisms (Expansion, 2019). The research developed in this article reflects a Master's thesis project in Administration (TecNM, 2019) of a leading Customs Agency in the border region of Tijuana and San Diego. (Coordinadora de Servicios Aduanales Atlas, S.C. 2020). The initiative is to design a model and proposal for the Mexican Standard (NMX) for an efficient implementation of Corporate Governance practices from the CALI-BAJA mega region, in the face of the globalization challenges posed by the new USMCA (CAAREM, 2020), a proposal from academic research (AAATT, 2019, TecNM et al., 2020).

## FRAMEWORK

Customs agencies operate under a customs broker patent with a natural person, and there is an amendment to the Customs Law published in the Official Gazette of the Federation on June 25, 2018 in which the model of a customs agency is established. so that it can operate under the concept of "customs agency patent", conceptualized as a legal entity. Facilitate the process of transition from the figure of customs agent to customs agency, through a corporate governance model, in order to continue being part of the supply chain. Currently, customs agencies that operate with a single customs agent patent may be affected in the event that the customs agent dies or suffers a permanent physical disability, since there is a risk that the company will not continue as a customs agency. according to the establishment of the patent figure of the customs agency; That is why it is important to consider and value the investment made in human and intellectual capital, as well as financial and technological investment, in order to preserve its continuity in the market. Points out that, for the purposes of a comprehensive investigation, the systemic approach and the analysis of the sectoral environment should be considered (Martinez, 2012), considering the methodology of the Fifth Systematic Helix, QHS in Spanish, (Martínez, 2021). which involves the government sector, academy, company (customs agencies), associations and consultants. Table 1 presents the methodological proposal that systematically integrates a set of sector integration initiatives to achieve good practices and compliance in Customs Agencies.

Under this approach to the analysis of focus group variables, the Mexican Standard (NMX) proposal for good Corporate Governance practices can be designed as recommended by the OECD. Based on the reform carried out in June 2018 to the Customs Law (AAATT et al., 2019), in its article 167-D section IV, which the letter

Table 1. QHS model to integrate customs agency application file

QHS methodology	Systematic actions to develop achieve best practices
H1. Government Sector	Analysis of requirements of the Customs Law 167-D and Customs services – standards in the services rendered by customs brokers – compliance (NMX-R-026- SCFI-2016)
H2. Education Sector	Update study plans and programs on Bachelor's Degree in Foreign Trade and Customs. Offer Labor, Professional and Research skills
H3. Company / Customs Agency	Prepare a strategic plan in accordance with the requirements and regulations to achieve registration as a Customs Agency
H4. Professional associations and Chambers of Commerce	Development of training programs and professional updating according to the new Customs Agency model, with Skills Standards that integrate knowledge, skills and attitudes in key positions (competitive occupational profiles)
H5. Consultants and Sectorial Experts	Development of intervention-consulting model in Customs Agencies organizations to develop help them achieve Corporate Governance practices

states: IV. Include in their bylaws, mechanisms aimed at establishing best corporate practices that contribute to the efficient functioning of their administrative and oversight bodies, having to comply, in addition to the obligations provided for The Federal Customs Law with modifications in Article 167-D. It establishes that the Customs Agency is the legal entity authorized by the Tax Administration Service to promote the customs clearance of merchandise, on behalf of others, in the different customs regimes provided for in this Law. Which must comply with the following aspects: Carry out the following functions:

- a) Monitor the operation of the company in accordance with applicable regulations.
- b) Maintain processes of transparency in administration through financial information and communication between partners, implement mechanisms for the identification, management and control of risks.
- c) Issuance of the Code of Ethics for members of the company.

- d) Have a procedure for the continuity of the company, in the event of voluntary retirement or due to permanent disability, death, resignation or any separation of functions of the partners or members of the management and administration bodies of the company.
- e) Ensure that the company's governance model contributes to the proper and complete fulfillment of its corporate purpose.

The points out that for Customs Agents, strategic control allows to establish rules, methods and tools to measure and analyze congruence, progress and effectiveness in achieving objectives (Moran & Ferrer, 2015). According the international logistics generates a competitive advantage for companies and nations through the global value chain (Shujie & Zhao, 2009). Therefore, it is necessary to size the variables that affect customs competitiveness. Through the indicator called the customs competitiveness index and indicates that the most competitive countries in customs matters in descending order are Panama followed by China, India, Germany, Korea, Sweden, Singapore, Turkey, Thailand and Chile. Raises the Patent extinction variables of a customs agent. That is why the challenges of Table 2 of the variables that will impact the regulations of the Customs Law in Mexico must be dimensioned.

As a proposal for a guide to good business practices and the model of a Mexican Standard, the following elementary points are proposed for the transition process to the formation of a Customs Agency, including Corporate Governance practices in small foreign trade companies, they are listed below:

1. Mission, Vision, Values, Objectives and Institutional Goal
2. Board of Directors and Committees
3. Strategic Plan for Customs Agency
4. Management Policies of the Customs Agency (Quality, Security and Systems)
5. Control Board - Functional Performance and Results Indicators (KPI'S)
6. Risk Management System
7. Code of Ethics and Conduct

Table 2. Customs Agency Authorization Request Documentation

Modification in the Law	Variables - Customs Broker Patent Extinction
Federal Customs Law in Mexico	<ol style="list-style-type: none"> <li>1. Quality manual / NMX026-R-SCFI-2016</li> <li>2. Authorized Economic Operator System (AEO) Manual</li> <li>3. Operations Risk System Manual</li> <li>4. Manual to identify Clients and Vulnerable Operation Users</li> <li>5. Supporting documents Civil Society</li> <li>6. Good Corporate Governance Practices Manual</li> </ol>

The points out that going through customs is an obligatory process to participate in foreign trade. Customs clearance and all customs actions can be daunting processes

for those entering new markets (Zamora & Ayvar, 2015). It is essential that customs are facilitators of the timely delivery of goods and the reduction of international trade costs. (Zamora et al., 2016).

## **CONCLUSIONS**

This research benefits the partners of a Customs Agency, their staff and the environment of the users of the Customs Agencies services. The new regulations of the Federal Customs Law to obtain the figure of Customs Agency must include in its social aspects: mechanisms of best corporate practices for an efficient operation of its administrative and surveillance bodies. It should be mentioned that traditionally Customs Agencies companies have been characterized by the figure of a natural person with a Customs Patent granted by the Government Authority, to develop and provide foreign trade and customs services, the new modification to the Federal Customs Law, It involves a series of new actions to be developed for the benefit of the structure of the company as a legal entity in accordance with the guidelines of the Ministry of Finance and Public Credit in Mexico. What can be synthesized in the model of transfer of experience and good practices from the figure of a tax person to a legal entity, ensuring that the extinction of the business is avoided in the event of the death of the owner. the Customs Patent, ensuring business continuity over time, through the development of a business model that includes good practices of a corporate governance structure. All of the above generates a reflection of the need for integration of all sectors of society that influence and contribute to Foreign Trade and Customs services to face the challenges of efficiency and global competitiveness being the academic sectors that through documented case studies can provide intervention models to strengthen knowledge, skills and service attitudes in foreign trade and customs for the benefit of society. Developing relevant initiatives in study programs, development of competency standards to certify competencies in key functions of strategic positions in Customs Agencies, through work in Professional Residencies and Thesis Work to develop Brand Standards that document and register models of usefulness of good practices at national and international level.

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