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Doing Business in Mexico

2024

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Acknowledgments

Consulting, data collection and analysis

Foreign Investment Law
Reynaldo Vizcarra
Jesús Antonio Pérez

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Raymundo Enríquez
Luis Amado
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Overview

This guide serves as a general overview of the fundamental aspects of constituting and operating companies in Mexico, a country currently in the international spotlight as a prime nearshoring destination. Thanks to its proximity to the United States, Mexico has become an attractive investment hub.

This year, the upcoming presidential election in Mexico will play a pivotal role in shaping the nation's future. This election presents a new opportunity to reassess, strategize, and institutionalize nearshoring as a growth driver for the Mexican economy. In this context, companies seeking to establish themselves in Mexico will undoubtedly seek expert advice on the basic yet complex aspects of doing business in the country. The ability to adapt to the country's unique realities will be paramount.

As we enter the fourth year of the USMCA, Mexico has surpassed China as the main business partner of the US. Key industries such as automotive, electronics, medical devices, technological services and aerospace continue to thrive, bolstering this commercial relationship. Furthermore, companies worldwide recognize the need for diversified supply chains. Mexico's manufacturing capabilities align well with this trend, positioning the country favorably to seize the opportunity.

Other factors that companies will closely monitor are related to energy supply, particularly clean energy. Multinational entities looking to establish themselves in Mexico often require a commitment to clean energy. Furthermore, challenges related to water supply and the availability of qualified workers are growing concerns. These factors, combined with constraints in the federal budget for 2024 and inflation levels that remain barely subdued, may limit investments related to nearshoring.

We hope that this guide will give you an initial perspective into the fundamentals of ramping up operations in Mexico. However, tailed solutions are required to minimize risks and maximize rewards. And as we have done for the past 75 years, Baker McKenzie is uniquely situated to support these complex and challenging projects.

We look forward to engaging with you in the near future.

José (Pepe) Larroque
National Managing Partner

Foreign Investment Law

1. Foreign Investment Law

Mexico enacted a new Foreign Investment Law ("FIL") in 1993. The new FIL dramatically changed the regulatory framework for foreign investments in Mexico that had been in place since 1973. Additional reforms have been made to the FIL, being some of the most important ones those made in 1995, 1996, 1998, 1999, 2001, 2006, 2008, 2011, 2012, 2014 and 2015.

2. No restrictions on most investments

As a general rule, the FIL allows foreign investors and Mexican companies controlled by foreign investors, without prior approval, to (i) own up to 100% of the equity of Mexican companies; (ii) purchase fixed assets from Mexican individuals or entities; (iii) engage in new activities or produce new products; (iv) open and operate establishments; and (v) expand or relocate existing establishments. The only exceptions to that general rule are those expressly established in the FIL itself (discussed in Section "Restricted activities under the FIL" below) or, in the case of the financial sector, in the legislation covering that sector. This new regulatory framework replaces the restrictions of the old foreign investment law, which generally limited foreign investment in Mexican companies to 49% or less.

3. Restricted activities under the FIL

The FIL lists certain economic activities that are (i) reserved to the Mexican State; (ii) reserved to Mexican nationals or Mexican companies without foreign equity participation; (iii) subject to quantitative foreign investment limitations; and (iv) subject to prior approval if the foreign investor wishes to own more than 49% of a company engaged in those activities.

a. Activities reserved to the Mexican State

In compliance with the Mexican Constitution and as a reflection of historical concerns regarding private investment, the FIL reserves certain strategic areas to the Mexican State. Neither Mexican nor foreign investors may engage in these areas of economic activity. These areas include: (i) exploration and extraction of petroleum and other hydrocarbons; (ii) planning and control of the national electricity system as well as the public service of transmission and distribution of electricity; (iii) nuclear energy generation; (iv) radioactive minerals; (v) telegraphs; (vi) radio telegraphy; (vii) mail service; (viii) issuance of money; (ix) control, supervision and security of ports, airports and heliports; and (x) certain others expressly indicated under the corresponding legislation. It is important to note that sections (i) and (ii) will be carried out in accordance with the Mexican Constitution and the regulations on electricity.

b. Activities reserved to Mexican investors

The activities reserved by the FIL to Mexican nationals and to Mexican companies without foreign equity participation include: (i) domestic land transportation of passengers, tourism and cargo, excluding messenger and courier services; (ii) development banks; and (iii) professional and technical services reserved to Mexicans under the corresponding legislation. Under the FIL, foreign investors may not engage in any of the foregoing activities, directly or indirectly, through any agreement or corporate structure or scheme, except through special approved "neutral" shares without voting rights or with limited corporate rights, or as otherwise approved by the National Commission of Foreign Investments ("NCFI").

c. Activities with foreign investment equity limitations

The FIL establishes foreign ownership limits in certain companies, activities and types of shares, as set forth below:

- Up to 10%: production cooperatives.
- Up to 49%: production and sale of explosives, firearms, cartridges, munitions, fireworks, excluding the purchase and use of explosives for industrial and extractive purposes, and the preparation of explosive mixtures for use in such activities; printing and publication of newspapers for exclusive distribution within Mexico; Series "T" shares of companies owning agricultural, cattle-raising and forest lands; freshwater and coastal fishing, and fishing in the exclusive economic zone, excluding aquaculture; comprehensive port management; piloting services for vessels engaged in interior navigation; shipping companies that operate commercial vessels for navigation in interior waterways and between domestic ports, excluding tourist ferries and the exploitation of dredges and naval devices for port construction, maintenance and operation; supply of fuel and lubricants for ships, airplanes and railroad equipment; certain telecommunication services depending on the reciprocity that exists in the country of the ultimate parent of the potential investor; and domestic (regular and non-regular) and specialized air transport and air-taxi transport.

Unless a treaty provides otherwise, a foreign investor may not own more than the permitted percentage of equity in a Mexican company engaged in any of the above activities. These limits may not be surpassed either directly or through any type of agreement or corporate structure or scheme, except through the "neutral" shares mentioned in the FIL.

d. Activities where foreign investors require prior approval of the NCFI to own more than 49%

Under the FIL, prior approval is required for foreign investors to own more than 49% of a company engaged in any of the following activities:

- Port services to vessels engaged in interior navigation, such as towing and mooring.
- Naval companies using vessels exclusively for high-seas traffic.
- Companies authorized to operate public airdromes.
- Private schools, at the preschool, primary, secondary, preparatory and higher education levels.
- Legal services.
- Construction, operation and exploitation of railways as well as public railroad transportation services.

Foreign investors are required to obtain prior approval of the NCFI to own more than 49% of a new or existing Mexican company and must therefore file an application with the NCFI. The NCFI has 45 business days from the day the application is filed to issue its ruling.

4. Restricted activities under the FIL

Under the FIL, a foreign investor may acquire more than 49% of the equity of an existing company owned by Mexican investors, without the prior approval of the NCFI, provided that the target company is not engaged in a restricted activity and the total value of the assets of such company does not exceed certain monetary thresholds established annually by the NCFI. Currently, this threshold is MXN 24,979,862,979.30 (approximately USD 1,469,403,704.00), valid as of October 2023 pursuant to the publication made in the Federal Official Gazette dated 27 October 2023, and until a new general resolution is issued.

5. Branches and representative offices

Under the FIL, a foreign company must obtain approval from the Ministry of Economy ("SECON") to establish and register a branch or a representative office in Mexico. SECON must rule on the branch application within 15 business days from the date the complete application is filed. However, on 8 August 2012, SECON published in the Federal Official Gazette (FOG) a general resolution issued by the NCFI eliminating the requirement to obtain such registration for foreign companies from the USA, Canada, Chile, Costa Rica, Colombia, Nicaragua, El Salvador, Guatemala, Honduras, Uruguay, Japan and Peru, and stating that such entities only have to file a notice declaring certain information of the company, such as the corporate purpose, main activity and domicile. After the company files the notice, it can be registered with the Public Registry of Property and Commerce. Likewise, on 13 May 2014 and 25 March 2020, it was published, respectively, in the FOG an extension to the above regarding the elimination of the requirement to obtain such registration for foreign companies from the countries listed in such publications of the FOG, including among others: Germany, Saudi Arabia, Argentina, Australia, Austria, Bolivia, Brazil, China, Cuba, Denmark, Ecuador, United Arab Emirates, Spain, Russia, Italy, France, Norway, United Kingdom, Singapore, Switzerland, Sweden, Netherlands, Nigeria, Dominican Republic and South Africa.

6. Registration requirements

Under the FIL, all foreign investments, whether subject to prior approval or not, must be registered with the Foreign Investment Registry within 40 business days from the date of the respective incorporation, branch registration, acquisition or execution of the relevant trust agreement. Foreign investors that do not register their investment with the Foreign Investment Registry are subject to administrative fines.

7. Repatriation and remittance rights

Mexican law does not impose any general restrictions or limitations on the remittance of dividends or repatriation of capital.

8. Real estate

Mexican law establishes certain restrictions on land ownership by foreign investors in Mexico. These restrictions are discussed below.

a. Restricted Zone

Under the Mexican Constitution, foreign individuals and entities may not hold direct title to real estate in Mexico located within 100 kilometers from the border or 50 kilometers from the coastline (**"Restricted Zone"**).

However, such individuals and entities may hold the beneficial interest in such real estate under a Mexican trust. Real estate trusts in Mexico have a maximum duration of 50 years and the trustee thereof must be a Mexican financial institution.

Under the FIL, Mexican companies with foreign equity participation may hold direct title to real estate located in the Restricted Zone, by previously securing a permit or filing a notice before the Ministry of Foreign Affairs, as may be applicable.

b. Non-rural land outside Restricted Zone

Under Mexican law, foreign individuals and Mexican companies with foreign equity participation may hold direct title to non-rural land located outside the Restricted Zone.

c. Rural land outside the Restricted Zone

Foreign individuals may hold direct title to rural land located outside the Restricted Zone. Mexican companies with foreign equity participation may hold direct title to rural land, provided that the ownership of such land is represented by special Series "T" shares. Foreign investors may not own more than 49% of the Series "T" shares issued by the respective company.

d. Quantitative restriction of land ownership

The Mexican Constitution and regulatory agrarian legislation establish limitations on the amount of rural land a person may own and protect against expropriation for communal use. For example, generally, the maximum area of irrigated land that may be protected from expropriation is 100 hectares per person. For lands subject to seasonal use and un-irrigated pastures subject to agricultural harvest, the maximum protection area is 200 hectares. Under the Constitution, a Mexican corporation may own and protect up to 25 times the land area one individual is permitted to protect.

Under certain circumstances and if certain requirements are met, a landowner may protect an area that exceeds the above limitations, such as if the landowner improves the quality of the land by installing irrigation or drainage systems.

Competition Law

1. Competition Law

In Mexico, the first Antitrust Law dates back to December 1992. Since then, the Mexican Antitrust legal framework has been evolving. The most recent development was on June 11, 2013, when Mexico passed a bill for the amendment of several provisions of the Mexican Federal Constitution introducing important and substantial changes to competition regulation. Afterwards, on 23 May 2014, a New Mexican Competition Law (**"MCL"**) was published in the Federal Official Gazette. The new law became effective on 7 July 2014[1] and has been subject to minor amendments since it became effective.

Changes introduced by both, the Constitutional amendment and the MCL, aim to strengthen the Mexican Competition Policy, as well as the authorities in charge of enforcing the competition law, by creating two autonomous agencies: (i) The Federal Economic Competition Commission - **"COFECE"** (for its acronym in Spanish, which replaces the former Federal Competition Commission - FCC); and (ii) The Federal Institute of Telecommunications - "FIT" (which replaced the former Federal Telecommunications Commission - FTC).

Both COFECE and the FIT enforce the MCL, including handling merger control processes, monopolistic practices investigations and proceedings to resolve the existence of dominant undertakings. The FIT enforces the MCL in matters involving telecommunications and broadcasting, whereas the COFECE deals with all other industries.

The MCL: (i) restricts monopolistic practices and regulates concentrations; (ii) grants, both COFECE and the FIT, broad investigative and enforcement powers; (iii) sets forth the basic procedure for actions to be carried out by and/or before COFECE or the FIT; and (iv) establishes the sanctions that may apply for breaching the Competition Law, without prejudice of the private right of action for damages and lost profits that might be applicable.

The MCL is applicable to all areas of economic activity and is of general observance in Mexico; therefore, all companies and individuals should observe such law.

2. Monopolistic practices

The Competition Law prohibits in broad terms those monopolies and practices which "diminish, harm, impede or condition free competition in the production, processing, distribution or marketing of goods or services." Monopolistic practices, pursuant to the MCL, are classified as: horizontal monopolistic practices (also known as absolute or cartel monopolistic practices), and abuse of dominance practices (also known as vertical restraints or relative monopolistic practices).

2.1 Horizontal Monopolistic practices

Horizontal monopolistic practices or cartel practices are defined as any agreement between competitors with the purpose of eliminating competition between them. According to the MCL, typical horizontal monopolistic practices include contracts, agreements, arrangements, or combinations among competitors, whose purpose or effect is to: (i) fix, raise, coordinate, or manipulate prices; (ii) limit production, purchase or distribution; (iii) divide, distribute, allocate portions or segments of the markets; (iv) "rig" bids; or (v) exchange information resulting with any of the purposes or effects referred to in any of the above mentioned conducts -under items (i) to (iv)

1. Ley Federal de Competencia Económica (cofece.mx)

above-. The MCL provides that, in addition to the civil and criminal sanctions that may be applicable to the parties involved, such agreements and arrangements are null and void; and therefore, they will not have any legal effect (i.e. they are non-enforceable agreements).

In Mexico the following are the administrative and criminal penalties for engaging in horizontal monopolistic practices or cartel practices:

(i) Fine up to 10% of the responsible company's annual revenues in Mexico;

(ii) Fine up to $1,206,000 USD for any individual participating in such practices on behalf of a company;

(iii) Fine up to $1,080,000 USD for fostering or supporting such practices;

(iv) Ban to hold managerial and representative positions in a company for up to five years.

2.2 Civil and Criminal Penalties

In addition to the administrative fines, the responsible companies/individuals engaged in a horizontal monopolistic practice may also be subject to civil responsibility for damages. Likewise the responsible individuals could be subject to imprisonment for a period between 5 to 10 years and supplementary monetary fines.

It is either COFECE or the FIT the ones entitled to request the General Attorney to bring the criminal action against an offender, identifying the individuals that are allegedly responsible for the corresponding horizontal monopolistic practice.

2.3 Abuse of Dominance Practices

Abuse of dominance practices are -generally- unilateral conducts carried out by undertakings with substantial market power (or dominance), with the purpose to displace competitors or restrict actual or potential competition. Please note that substantial market power or dominance is defined, in general terms, as the ability for a company to fix prices or restrict supply, without any competitors being able to counteract such power.

In a competitive and dynamic environment, it is natural for some companies to be more efficient than others, just as it is natural for less efficient companies to exit the market because they are no longer a profitable business. This dynamic process can sometimes result in companies that are more efficient than their competitors (e.g., offering lower prices), growing and even come to dominate a market.

Please note that dominance can also result from or be aggravated by other causes, such as barriers to entry that make it difficult for firms to enter the market. These barriers can be of different types: artificial, such as government regulations or policies; those resulting from industry conditions themselves, such as the initial or sunk costs that are necessary to enter a market; or those that arise as a result of the commercial practices or strategies of agents already established in the market.

Abuse of dominance practices consist of acts, contracts, agreements, procedures, or combination, whose purpose or effect is to eliminate third parties in a specific market, unduly prevent market access to third parties, or give exclusive advantages to certain persons. The MCL establishes the following conducts as abuse of dominance practices:

1 Between non-competitors, (a) establishing exclusive marketing or distribution agreements, whether based on subject matter, geographic territories or time periods, including the division, distribution, or allocation of customers or suppliers; and (b) imposing non-compete obligations for certain periods.

2 Imposing price or other conditions on distributors or suppliers on the re-sale of goods or the provision of services.

3 Bundling/tying sales.

4 Conditioning sales, purchase, or other transactions on not dealing with certain third parties.

5 Refusing to deal with certain parties.

6 Pressuring or retaliating against third parties through concerted action (e.g., boycott).

7 Selling goods or services below average (total or variable) cost.

8 Selling or granting of discounts conditioned on exclusivity.

9 Providing crossed subsidies.

10 Practicing price discrimination among different buyers or sellers that are under the same conditions or circumstances.

11 Engaging in any other action to increase the costs, block the production processes or reduce the sales of third parties.

12 Discriminatory access to essential inputs.

13 Margin squeeze.

Abuse of dominance practices, unlike horizontal monopolistic practices (explained below), ***are not illegal per se***. Thus, in order for such practices to be illegal, they must: (i) be performed by an undertaking with substantial market power (or dominance); (ii) unduly displace other companies from the market; and (iii) have a negative impact on the involved markets.

(a) In Mexico the following are the administrative penalties for abuse of dominance practices:

(b) Fine of up to 8% of the responsible company's annual revenues in Mexico;

(c) Fine up to $1,206,000 USD for any individual participating in such practices on behalf of a company;

(d) Fine up to $1,080,000 USD for fostering or supporting such practices;

(e) Ban on holding any managerial and representative positions in a company for up to five years.

3. Merger Control (Concentrations)

Mexico has a merger control regime. Please note that the MCL sets the thresholds to determine whether a transaction (or concentration) triggers or not a merger control process, so that the Parties to the transaction most secure clearance -from COFECE or the FIT-before completing their operation --i.e. before closing--. Further details are included in the following sections below.

In general terms, a concentration is defined as any merger, acquisition of control, or any other act by which companies, associations, shares, partnership interests, trusts, or assets in general are acquired -i.e. basically any transaction is considered as concentration under the terms of the MCL-. A prohibited concentration is defined as a merger, acquisition or other action between any persons or entities, whether competitors or not, having the purpose or effect of diminishing, harm or impede competition in identical, similar or substantially related goods or services. The MCL identifies certain items that COFECE/FIT must consider in determining whether a concentration is prohibited, such as the possible market power; potential barriers to entry; foreclosure effects; or price-fixing capabilities resulting from

the concentration. COFECE/FIT have the power to condition approval of a proposed concentration on the restructuring of the transaction to avoid anti-competitive consequences. In addition, COFECE/FIT are also empowered to order the partial or full unwinding of a prohibited concentration.

COFECE/FIT must be given prior notice of a proposed concentration if the intended transaction: (i) has a price or value in Mexico exceeding 18 million times the value of the Unit of Measure[2] (UMA)[3], (approximately USD 108.50 million[4]); (ii) involves the accumulation of more than 35% of the assets or shares of an undertaking whose assets or sales in Mexico exceed more than 18 million times the UMAs (approximately USD 108.50 million); (iii) (a) implies an accumulation of assets or capital stock in the Mexican Republic that exceed 8.4 million times the UMA (approximately USD 50.60 million), and (b) involves undertakings whose combined assets or annual sales in Mexico exceed 48 million times the UMA (approximately USD 289.50 million).[5] Failure to file can result in a fine of up to 5% of the parties annual turnover generated in Mexico.

After the initial filing, COFECE/FIT has 60 business days to issue a decision on a concentration (an extension of 40 business days is available for the authority in complex cases). The term restarts if COFECE/FIT requests any additional information after receiving the initial filing. If COFECE/FIT does not rule on a case within 60 business days, the transaction will be deemed as approved.

The approval of the transaction will be valid for six months, which may be extended for another six months with justification by the parties. The transaction may not be closed after the expiration of such periods unless a new notification is filed.

On 8 December 2017, COFECE introduced and set the rules under which it will operate its electronic merger control filing system. In light of the above mentioned, as of year 2018, the parties to a reportable transaction can notify such operation either in person at COFECE's Filing Office (as customary) or electronically through the above mentioned merger control filing system. As of 08 April 2021, the new Guidelines for Concentration Notification were approved and published[6]. The purpose of these Guidelines is to ease and expedite the notification of a concentration, with the use of electronic filing process. Electronic notification of Concentrations is obligatory since January 2020.

4. Federal Economic Competition Commission and Federal Telecommunications Institute

As the agencies responsible for enforcing the MCL, COFECE and the FIT have broad investigation and enforcement powers. They may initiate administrative procedures on their own, or, at the request of third parties. Once the procedures are initiated they can investigate and resolve such cases and enforce its orders through administrative penalties. They may also refer criminal cases to the District Attorney. Moreover, COFECE and the FIT may issue opinions, both binding and non-binding, in antitrust matters.

5. Dawn raids

During the investigation of a monopolistic practice, COFECE/FIT may conduct verification visits or dawn raids without prior notice, at the premises of the entities under investigation to retrieve documents and information related to the investigation. In addition, COFECE/FIT are empowered to interview any employee of the target during the raid.

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2. Measure Unit and Upgrade (UMA) (inegi.org.mx)
3. The value of the UMA (from 1 January 2024) is: MXN 108.57. Note that the value of the UMA is updated each year and the next update should be published by mid-January 2025.
4.Taking this into consideration, this threshold amounts to MXN 1,954.26 million.
5. The exchange rate is volatile. For reference purposes, we used an exchange rate of MXN 18 per USD 1.00 to calculate these amounts.
6. DOF- 08-04-2021

If during a dawn raid, an individual by any means alters, destroys, either totally or partially documents, images or electronic files that contain information or data, in order to divert, obstruct or avoid the investigation of a possible criminal act or the practice of administrative investigation, sanctions ranging from one to three years in prison and a pecuniary penalty may be imposed.

6. Action for damages and lost profits

The MCL also grants private parties the right to bring ordinary civil suits for damages and lost profits. In order to bring such an action, the plaintiff must have previously alleged and provided evidence of damages and lost profits during the administrative proceedings before COFECE/FIT. The judge is allowed to consider COFECE/FIT's opinion on the plaintiffs' alleged damages and lost profits.

On 29 February 2012, class actions (collective actions) were introduced into Mexican law by amendments to the Federal Civil Proceedings Code (enacted in August 2011). This amended code allows COFECE/FIT or any representative of a group comprising at least 30 members to file a collective action for damages in circumstances where a group of end consumers have been harmed by an anti-competitive practice. As with individual actions, a prior finding of infringement by COFECE/FIT is a condition to bringing a collective action for damages.

7. Legal Privilege

In 2019, COFECE published in the Federal Official Gazette the Regulatory Provisions for the qualification of information derived from legal counsel provided to undertakings (Regulatory Provisions), which establishes measures for how information resulting from legal counsel between a lawyer and a client is handled. The COFECE recognizes legal privilege in antitrust investigations. These Regulatory Provisions recognize this type of confidential communications must be protected, and lack evidentiary value.

These Regulatory Provisions provide protection for any privileged attorney-client communications obtained in the investigative process, including through information requests, or collected in a dawn raid. These Provisions establish privileged communication lack probative value, and provides safeguards for the rights of undertakings, and due process.

IMMEX or Maquiladora Program

1. IMMEX or Maquiladora Program

The Mexican maquiladora or "IMMEX" program was introduced over 30 years ago by the Mexican government to promote employment in Mexico. The maquiladora industry in Mexico is governed by the Decree for the Promotion of the Manufacturing, Maquiladora and Export Services Industry ("**Maquiladora Decree**" or "**IMMEX Decree**") in accordance with its last amendment on 5 October 2017 and the Mexican Income Tax Law published on 30 November 2016.

2. Corporate presence in Mexico

Under the IMMEX Decree, a foreign investor may qualify to operate under maquiladora status only if it has a corporate presence in Mexico. A Mexican corporation that qualifies for maquiladora status may have up to 100% foreign ownership. The great majority of maquiladoras (also known as IMMEX companies) are wholly owned by foreign corporations.

3. Import permits and operation

The Ministry of Economy ("**SECON**") is the authority in charge of authorizing the maquila or IMMEX program. In order for a company to qualify and obtain such authorization, the company must submit certain documentation and provide detailed information about the manufacturing process or service operation to be carried out, including descriptions of the following:

- The product(s) to be assembled and/or manufactured in Mexico.
- The manufacturing or service process.
- The time and domicile where temporarily imported goods will remain in national territory.
- The investment program in Mexico.
- The materials, machinery, equipment, tools and auxiliary items to be temporarily imported into Mexico for the manufacturing or service process.

Additionally, for purposes of the IMMEX Decree, the company must either have foreign sales of more than $ 500,000 annually or derive at least 10% of its total invoicing from exports of products or services.

SECON has 15 business days from the date of filing of the maquiladora application to issue its resolution. If SECON does not issue a resolution within this period, the application will be deemed to be approved. The approved maquiladora program has an indefinite validity, provided that company permanently complies with all the provisions of the IMMEX Decree and the specific conditions for the maquiladora program approval.

a. Maquila services

The IMMEX Decree provides for different types of maquiladoras: industrial, services, holding, outsourcing and shelter. The most common are the industrial maquiladoras (engaged in manufacturing activities) and services maquiladoras (engaged in providing services for goods to be exported or providing export services). Currently, companies that qualify for a services maquiladora program include those providing services for importation, warehousing, distribution, classification, inspection, testing, verification, repair, reworking and recycling of goods subject to be exported.

Services such as product design, engineering, software-related, administration and information technology services may also qualify under a services maquiladora program.

The tax reform, in force since January 2014, includes a definition of what constitutes a "maquila operation" for purposes of exempting the foreign Principal of the maquiladora from a permanent establishment exposure. This definition is established in the Income Tax Law.

4. Temporary importation

In general terms, the maquiladora/IMMEX program allows the temporary importation of goods (including any material, parts and components, machinery and equipment) used in the manufacture of export products or in the rendering of export services. Currently, the temporary importation of goods is duty free under certain circumstances (as discussed further below in Section "Import duties", subsections b) and c)). An additional benefit for companies operating under the IMMEX program is that they are exempted from non-tariff-related regulations and restrictions (such as product labelling) on temporarily imported goods.

Pursuant to the recent tax reform effective since January 2014, the temporary importation of goods under an IMMEX program are subject to the payment of Value Added Tax ("VAT") and Special Tax on Products and Services ("IEPS"). Nonetheless, VAT paid upon temporary importation of goods may be recovered, provided the importers evidence the subsequent exportation of such goods. Alternatively, importers may avoid payment of VAT upon temporary importation of goods by: (i) securing a certification from the tax authorities to access advanced credit for the VAT to be levied upon temporary importation (VAT/"IEPS Certification"); and/or (ii) using a bond to guarantee the subsequent exportation of the goods that were temporarily imported.

One of the most important obligations for maquiladoras is that every good imported on a temporary basis must be: (i) exported within the legally prescribed time frame; or (ii) changed from a temporary to permanent importation within the legally prescribed time frame, paying the corresponding duties and taxes. The period of time under which temporarily imported goods may remain in Mexico under the temporary importation customs regime varies as follows:

- Up to 18 months for raw materials, parts, components, auxiliary materials, packaging material, fuel and lubricants, as well as labels and bulletins, if those goods are imported by an IMMEX company.
- Up to 36 months if those goods are imported by an IMMEX company that is also authorized under the Certification Framework, VAT/IEPS modality, or up to 48 months if the importer is also authorized under SECIIT modality.
- Up to 24 months for trailer containers and other containers.
- For the validity of the IMMEX program for machinery and equipment.

As a general rule, an IMMEX Company is not allowed to transfer temporarily imported goods to other companies in Mexico except when such transfers are made to other maquiladoras; (b) Mexican automobile manufacturers; or (c) companies that are authorized to import goods to the strategic bonded warehouse regime.

When temporarily imported goods are transferred between maquiladoras, the goods are considered as virtually exported by the transferor maquiladora and virtually imported by the transferee maquiladora on a temporary importation basis. In such cases, the transferred goods must be exported or be subject to a change of custom regime from temporary importation to definitive importation within the prescribed terms for temporary importation.

In connection with the above, the Foreign Trade General Rules for 2023 ("FTGR") set forth that companies certified under the VAT/IEPS Certification, Authorized Economic Operator category, are allowed to transfer goods temporarily imported to non-IMMEX companies, as long as such companies comply with the requirements for such transaction.

5. Import duties

The payment of import duties upon temporary importation of goods into Mexico under an IMMEX program will be subject to different treatments as described below:

a. Duties on the importation of machinery and equipment

Currently, the importation of machinery and equipment is not subject to duty-free treatment. According to the Customs Law, an IMMEX company must pay the applicable duties upon the temporary importation of machinery and equipment. Nevertheless, reduced duties may be available through Mexico's network of free trade agreements and under special programs available for manufacturers, such as Sectorial Promotion Programs ("PROSEC"). Machinery and equipment temporarily imported are still exempt from compliance obligations related to certain non-tariff regulations and restrictions.

b. Duties on the importation of raw materials, parts and components pursuant to USMCA provisions (before NAFTA).

As a result of the implementation of the USMCA, if products manufactured with non-USMCA-originating raw materials, parts and components imported under temporary basis are exported to the United States or Canada, the non-USMCA- originating materials incorporated into products manufactured in Mexico may be subject to the payment of Mexican import duties. USMCA-originating materials are exempted from the payment of duties if imported on a temporary basis. The payment of duties in Mexico can be made pursuant to the so-called "lesser of rule" under Article 2.5 of USMCA. This rule calculates the amount of Mexican import duties applicable to non-USMCA-originating materials and subtracts the amount of import duties paid in the United States or Canada for the finished product imported into such countries. The result of this subtraction will be the amount of duties payable in Mexico. If the result is zero, no duties are payable in Mexico.

These rules are the same applicable under NAFTA.

c. Duties on the importation of raw materials, parts and components pursuant to the provisions of the Free Trade Agreement with the European Union

The free trade agreement entered by Mexico with the European Union ("EUFTA") has similar provisions to USMCA's Article 2.5. EUFTA provides that as of January 1, 2003, Mexico may not grant exemptions or drawback on import duties for non- EUFTA-originating inputs incorporated into products exported to the European Union. Still, EUFTA and USMCA provisions differ in the sense that duty relief restriction would only apply under EUFTA when the finished products (which contain non-EUFTA-originating inputs) are imported into the European Union with preferential duty treatment. Therefore, if the finished products are imported into the European Union without claiming preferential duty treatment, the maquiladora would not be subject to the payment of import duties for the non-EUFTA inputs incorporated in the finished products.

Other free trade agreements

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP") became effective on 30 December 2018, after Australia, Mexico, Canada, Japan, New Zealand and Singapore ratified the agreement. Recently, the agreement was also ratified by Vietnam and other members of this agreement, such as Chile Peru, Brunei and Malaysia.

The CPTPP eliminates and reduces tariff barriers and regulations in a substantial manner through all the commerce specter, including the commerce of goods and services, and the investments, creating new opportunities and benefits for companies, workers and consumers.

6. Certified Companies Framework

Maquiladora companies and certain non-maquiladora companies (in some cases) may secure a special registration from Mexican customs authorities to operate as a Certified Company, which grants access to certain benefits that allow companies to save costs and time by being able to enjoy easier and more expedited customs clearance processes, reduction in documentation requirements, as well as certain tax and customs advantages related to the virtual exportation and importation of goods. The specific benefits granted to each company depend on the category under which each company is authorized.

This framework includes different certification modalities in accordance with the operations and level of compliance with the requirements of the companies. This Certified Companies Framework that includes the VAT/IEPS Certification, Authorized Economic Operator ("AEO"), Certified Commercial Partner, Guarantee of Interest Payment and the Reliable Importer program ("Revisión en Origen") establishes as well the following submodalities:

- VAT and IEPS (A, AA and AAA categories).
- Trader and importer/
- Authorized Economic Operator, with the following modalities:
  - Importer and/or exporter
  - Controller
  - Aircrafts
  - SECIIT
  - Textile
  - Strategic Bonded Warehouse
  - Third-party services provider
- Certified Commercial Partner, which includes the following modalities:
  - Terrestrial carrier
  - Customs broker
  - Railway transport
  - Industrial park
  - Bonded warehouse
  - Courier companies

(A) Requirements to secure the registry under the Certified Company Framework

Companies shall follow certain requirements and steps in order to obtain the registry in the Certified Companies Framework. There are general requirements for all categories, as well as specific requirements for each category and-or sub modality, such as the value of importations, compliance with tax and customs obligations, number of employees and value of fixed assets, among others.

By virtue of the above referred framework, it is possible to apply for the registry as a Certified Company under the VAT/IEPS and AEO categories simultaneously. Additionally, it establishes the possibility of obtaining the automatic renewal of such registry as of the business day following the date of filing of the automatic notice and the standardization of the validity of the VAT/IEPS – OEA certifications.

For further reference, please find below a detailed description of two of the certification categories that grant the most important benefits (VAT/IEPS – AEO):

VAT and IEPS (Its main objective is to avoid the payment of VAT and IEPS on temporary importations, applying a tax credit in an amount equal to 100% of the applicable VAT and IEPS for the temporary importation of goods.)	▪ Tax credit on temporary importations in maquila programs; in fiscal deposit operations for the assembly and manufacturing of vehicles; of manufacturing or repair in the bonded warehouse or strategic bonded warehouse. ▪ Refund of the VAT paid in temporary importations. ▪ Goods temporarily imported under the IMMEX program may remain in national territory for up to 36 months.
AEO (Its main objective is to guarantee supply chain security.)	▪ Exclusive “EXPRESS” lanes. ▪ Transfer of temporarily imported goods to non-IMMEX companies through a virtual transaction. ▪ Fewer causes for suspension in the Importers Registry. ▪ Return of labels and manuals that were previously imported on a temporary basis, and without paying importation duties, to the United States or Canada. ▪ Regularization of surplus or undeclared goods detected by the authority (within a term of 10 days following the date of the corresponding notice). ▪ PROSEC rates for changes of customs regime from temporary importation to definitive importation. ▪ 60 days to comply with non-tariff regulations after the notification of a seizure of goods (PAMA). ▪ No obligation to provide the customs broker with the value manifest and the calculation sheet for the determination of the customs value of the goods to be imported. ▪ Possibility to self-correct the inconsistencies detected regarding omitted duties within 60 days, without the payment of fines. ▪ No automatic suspension in Importer’s Registry and Specific Sectors Importer’s Registry, derived from inconsistencies identified by the customs authority. ▪ Process pedimentos for temporary importation or return of surplus or undeclared goods detected by the authority (as long as such goods correspond to the productive process registered for IMMEX program purposes). ▪ Return, without penalties, undeclared goods that do not belong to IMMEX productive processes (as long as such goods are returned before audit). ▪ The samples registration of goods will have a validity of two years, term that may be renewed for an equal period. ▪ Benefit of processing one complementary pedimento for all returns in one month (USMCA-2.5).

7. Tax implications

As explained in more detail below, the tax implications for a maquiladora operation in Mexico are dependent on the operational structure and the type of activities carried out by the maquiladora.

a. Structuring of operations

Export maquiladora operations can be implemented either under what is commonly known as the "buy-sell" model or under a "consignment manufacturing" model.

Under a buy-sell model, the maquiladora company owns the machinery and equipment, raw materials used for operations and the finished products. IMMEX companies sell the finished products to foreign-related or unrelated parties or to customers in Mexico. An IMMEX company operating under this model is subject to taxation in Mexico under general rules.

A more common structure for maquiladora operations is the so-called consignment manufacturing model (or toll-manufacturing) whereby a foreign company provides (on a free bailment basis) the inventory and the machinery and equipment to the maquiladora company, which processes such inventory in exchange for a manufacturing services fee. The finished products are owned by the foreign resident.

This model allows for the foreign resident to maximize the benefits arising from the sale of the finished products while attributing a modest return to the maquiladora company calculated in accordance with transfer pricing regulations, as described in more detail below.

b. Tax benefits of operating as a maquiladora

Maquiladoras are subject to Mexican taxes, including Income Tax (ISR) and VAT. The tax benefits of operating through a maquiladora company structured under the consignment manufacturing model are summarized as follows:

- The ability to engage in consignment manufacturing (i.e., toll manufacturing) with a foreign Principal without exposing the foreign Principal to the risk of having a tax presence (i.e., a permanent establishment) in Mexico that subjects the foreign Principal to the payment of Mexican ISR.
- The ISR liability as determined pursuant to the maquiladora's income tax base at the general rate of 30%.
- The application of special transfer pricing rules that give the maquiladora a choice of two methods for computing the amount of the maquiladora service fee charged to the foreign Principal (included in Article 182 of the Income Tax Law).
- Zero VAT on the invoices issued by the maquiladora to its foreign-related party for the manufacturing processing or service fee.

(A) Requirements to have a maquila operation to exempt the permanent establishment exposure of the foreign Principal in Mexico

According to the Income Tax Law ("**ISRL**"), a permanent establishment exposure may be created for non-Mexican tax residents that have an economic or legal relationship with a Mexican entity who habitually processes for them consigned inventories, with assets furnished by the non-Mexican tax resident. However, such permanent establishment exposure may be exempt if the Mexican manufacturer operates in Mexico with an IMMEX authorization, if Mexico has in place a treaty for the avoidance of double taxation with the country of residency of the foreign Principal, and provided that the IMMEX company complies with the requirements to have a maquila operation under the terms of the ISRL, which may be summarized as follows:

- All the productive income of the IMMEX company must originate exclusively from its maquiladora operation.
- The materials subject to the manufacturing operations may be consigned by the non-Mexican resident. The materials consigned to the maquiladora may be property of a third party, provided that the third party has a manufacturing arrangement with the Principal of the maquiladora.
- The IMMEX company shall undertake transformation or repair activities. A transformation activity includes, by fiction of the law, the following specific processes carried out with temporarily imported merchandise:
- Dilution in water or in other substances.
- Washing or cleaning, including removal of rust, grease, paint or other covering surface treatments.
- The application of conservatives, including lubricants, protective encapsulation or protective painting.
- Adjustment, polishing or cutting.
- Adjusting in doses.
- Packaging or repackaging.
- Testing, marking, labelling or classification.
- Product development.
- Domestic goods or definitively imported goods may be incorporated in the manufacturing process, provided that they are exported abroad along with the finished products manufactured with the other temporarily imported materials.
- All of the temporarily imported goods must be physically or virtually exported.
- Therefore, it is possible to transfer finished products from one IMMEX company to another.
- The maquila operation must be carried out with machinery and equipment owned by the foreign resident in at least 30% out of the total machinery and equipment used in the maquila operation.
- In order to carry out the transformation and repair process, the use of machinery and equipment owned by the foreign resident may be supplemented with machinery and equipment owned by:

  i. A foreign resident that has a manufacturing relationship with the Principal of the maquiladora, provided that they have a manufacturing relationship.

  ii. The maquiladora.

  iii. A third party and leased from a non-related party.

However, in none of the above mentioned cases should the machinery or equipment have been owned by another resident in Mexico that is a related party of the maquiladora.

(B) IMMEX shelter companies

As published in the Federal Official Gazette on 23 December 2015, foreign residents who undertake operations in Mexico through an IMMEX company authorized under a Shelter modality were granted an additional four years to the previously determined term of four years in the ISRL, to operate in Mexico without being considered to have a permanent establishment in the country, provided they meet certain requirements and conditions.

8. Sales into the Mexican market

According to the IMMEX Decree, maquiladoras may sell a portion of their output in the domestic Mexican market. A maquiladora company may sell in the domestic market up to 90% of the total value of its annual sales. Import duties and VAT should be paid on all temporarily imported materials or components contained in the finished product to be sold in the Mexican market unless the sale is made to a foreign resident with a physical delivery to another maquiladora company in accordance with customs procedures mentioned above.

Certain complex rules must be observed for purposes of complying with trade and tax requirements. In most cases, the maquiladora company carries out those sales directly to customers in Mexico, but this may cause some distortion with respect to the application of the tax benefits applicable to maquiladoras (see this section) because those benefits are not intended to be applied to non-maquiladora operations, such as sales of products.

Nonetheless, pursuant to the ISRL, the sale of outputs in the domestic Mexican market by maquiladoras will not be subject to the tax benefits included in the ISRL as described above (see section “Tax implications”).

Company Law

1. Forms of business organizations

The Mexican General Law of Commercial Companies ("GLCC") regulates various forms of business organizations. The GLCC regulates not only the requirements for their incorporation, but also sets forth their corporate governance directives. Relevant and commonly used forms of business organizations regulated in the GLCC include the following:

- Corporations (*Sociedad Anónima* or S.A. or *Sociedad Anónima de Capital Variable* or "**S.A. de C.V.**"; hereinafter collectively referred to as "**corporation(s)**").
- Limited Liability Companies (*Sociedad de Responsabilidad Limitada* or "**S. de R. L.**" or *Sociedad de Responsabilidad Limitada de Capital Variable* or "**S. de R.L. de C.V.**").

Foreign investors and mainly US investors frequently incorporate limited liability companies because this form of business organization does provide limited liability to its partners and special treatment concerning US tax purposes (considered pass-through entities). Corporations, however, are also common form of business organization used in Mexico.

In addition, the Securities Market Law contemplates the following forms of business organizations:

- Investment Development Corporations (Sociedades Anónimas Promotoras de Inversión or SAPIs)
- Securities Investment Development Corporations (Sociedades Anónimas Promotoras de Inversión Bursátil or SAPIBs)
- Publicly Held Corporations (Sociedades Anónimas Bursátiles or SABs)

SAPIs' main purpose is to promote access to the technology sector and investment companies to thereby support seed capital, venture capital, and private equity investment due to SAPIs' shares flexibility and rights restrictions. Through several funding rounds, SAPIs attract different investors, as this figure allows to define, while defining the rights of each kind of share that will be issued, thus ensuring a more precise and flexible control of minority rights.

Under the SAPIBs modality, legal entities that require financial resources to achieve their particular objectives are incorporated, and for this, they have the possibility of financing themselves through the issuance of shares (variable income) and debt securities or bonds (fixed income). SAPIBs trade its shares in the stock market, such shares are registered in the National Securities Registry and are authorized by the National Banking and Securities Commission ("**CNBV**").

SAPIBs are an alternative to a SAPI, it is a type of intermediate company between the SAPI and the SAB. This type of company has all the benefits of the SAPI in terms of its corporate regime and guarantees the rights of minorities for its shareholders. Regarding its corporate governance, this type of company is more flexible than the SAB. This category of company facilitates the transition of a private company to the stock market. The incorporation of a company under this regime is intended for the entity to obtain sufficient capital and human resources to forge experience and reach the public markets.

2. Corporations

Corporations are created only by shareholders, which are obligated for the payment of their shares. As a capitalist company, shareholders with a greater ownership of the capital stock in a corporation will have more corporate and economic rights.

a. Capital stock

Upon incorporation, a corporation must have fully subscribed capital stock in an amount freely set by the shareholders in the corporation's charter and bylaws (minimum fixed capital) and at least 20% of their capital contribution paid in cash. In case of contributions in kind, the same must be subscribed and paid in full on the incorporation date. In case of in-kind contributions, certain special rules apply, requiring the corporation to withhold shares paid with in-kind contributions for two years as of the contribution's date as a guarantee that the value of the in-kind contributions are not reduced by more than 25%.

Shares are nominative titles/instruments that serve to certify and transfer the ownership and rights as shareholder and are considered negotiable instruments under Mexican law, representing the capital stock of corporations.

The S.A. and S.A. de C.V. differ in at least one significant aspect in this regard. In the case of an S.A., under its articles of incorporation and bylaws, the minimum fixed amount of capital stock is determined and any subsequent increase or decrease to such fixed capital requires amending the referred incorporation documents. However, under the articles of incorporation and bylaws of an S.A. de C.V., in addition to the minimum amount of capital stock, its charter and bylaws allow a variable portion of such capital to be increased or decreased by its shareholders (or by the admission of new shareholders). The variable portion of the capital stock may be unlimited and may vary without amending the incorporation documents as it would in the case of an S.A. For this reason, foreign investors, particularly those with wholly owned subsidiaries and that want flexibility to increase or decrease the corporation's capital stock without any other formalities, prefer to organize their business activities in Mexico under the form of an S.A. de C.V. rather than through an S.A.

b. Minimum number of shareholders

There must be at least two shareholders to incorporate a corporation. Unless otherwise limited by the Foreign Investment Law and its Regulations, the GLCC allows the shareholders of this type of company to be either Mexican and/or foreign individuals or entities.

The company will keep a share registry of each shareholder's name, address, nationality and federal taxpayer registry number, as well as the indication of the amount of shares owned (stating the numbers, series, classes and other particularities), share transfers, and amount paid or due for each particular case. The company shall consider as owner of the shares whoever is recorded in such registry.

Once the registry mentioned above is made, a notice regarding the current shareholding structure will need to be filed in the electronic system established by the Ministry of Economy regarding the shareholders and the current capital structure. In case of any update to the shareholding structure, a notice will need to be filed in the electronic system.

Likewise, Corporations with foreign shareholders must be registered in the National Registry of Foreign Investment (hereinafter collectively referred to as "**NRFI**"). In the event that: (i) a new foreign shareholder is admitted to the corporation; (ii) one that was already a shareholder transfers its shares; or (iii) the corporation changes its domicile or corporate name, a notice must be filed with the NRFI.

c. Management

The corporation's management may be vested in one (Sole Administrator) or more directors (Board of Directors). Whenever two or more directors are entrusted with the management of a corporation, they must act as a Board of Directors. If the Board of Directors has three or more members, the individual shareholder or group of shareholders owning 25% or more of the corporation's capital stock has the right to appoint at least one member of the Board. The corporation will be legally represented by said Sole Administrator or Board of Directors, as the case may be, and its authority will be contained in the corporation's bylaws or conferred by the shareholders.

The corporation's Sole Administrator, Board of Directors, or shareholders will be vested with the authority to appoint one or more general or special managers. By its nature, such appointment may be revoked at any time by the corporation's Sole Administrator, Board of Directors or by the shareholders.

Appointment as Sole Administrator, Board member and/or general or special manager is subject to certain statutory limitations contemplated by the GLCC.

d. Management surveillance

In order to obtain better protection of the shareholders' interests in corporations, the GLCC states that its surveillance will be managed by one or more Statutory Examiners ("Comisario") appointed directly by shareholders, whose main rights and obligations will be to present to the Ordinary General Shareholders' Meeting ("**Asamblea General Ordinaria de Accionistas**") annually, a report addressing truthfulness, adequacy, and reasonableness of the information presented by the Sole Administrator or Board of Directors, as the case may be, to the Shareholders' Meeting.

Similar to the appointment of managers attempting to secure their independence with respect to the corporation's management, the GLCC includes certain statutory limitations that must be followed prior to appointment as Statutory Examiner of any given corporation. For example, a corporation's employees cannot be appointed Statutory Examiner.

e. Annual shareholders meetings

The shareholders of Mexican corporations must hold an annual shareholders meeting to discuss and approve, as the case may be, the management report and the financial statements of the corporation. Such annual shareholders meeting must be held no later than 30 April of every year.

Shareholders can be represented by attorneys-in-fact in Shareholder Meetings pursuant to the corporation's bylaws, however the Sole Administrator, members of the Board of Directors or Statutory Examiners cannot serve as attorney(s)-in-fact to represent shareholders on meetings.

3. Limited liability companies

Limited liability companies are formed by members who are obligated to pay only up to the amount of their contributions. In contrast to a corporation, the partners' contributions are only represented by quotas, which are not considered negotiable certificates. The transfer of quotas and admission of new partners are limited in this company.

a. Capital

For the incorporation, a limited liability company must have a fully subscribed capital with at least two equity quotas valued no lower than MXN 1.00 each (minimum fixed capital), as established by the members in the company's charter and bylaws, and at least 50% of such capital contribution must be fully paid. The assignment of equity quotas, as well as the admission of new members to participate in the limited liability company's social capital, require a prior favorable resolution of the majority of its members, unless the company's bylaws establish a higher percentage. In the event that the transfer of an equity quota is authorized in favor of a third party, the members of the company will have a preferential right that must be exercised within the fifteen days after the date on which such transfer was authorized.

The company will keep a members' registry book, in which the name and address of each of the members will be registered, indicating their contributions, federal taxpayer registry number, and the transfers of the equity quotas. The transfers will be effective before third parties once they have been registered in such members' registry book.

Once the registry is made, a notice regarding the current members and the current capital structure will need to be filed in the electronic system established by the Ministry of Economy.

Likewise, limited liability companies with foreign members must be registered in the NRFI. In the event that: (i) a new foreign member is admitted to the company; (ii) one that was already a member transfers its equity quota; or (iii) the company changes its domicile or corporate name, a notice must be filed with the NRFI.

Like corporations, the rules regarding the treatment of minimum fixed and variable portions of the social capital on the S. de R. L. and the S. de R.L. de C.V. are the same as for the S.A. and S.A. de C.V.. Based on the above considerations, most foreign investors prefer to organize their business activities in Mexico under the form of a S. de R. L. de C.V. rather than through a S. de R. L.

b. Number of members

At least two members must organize a limited liability company; a limit of 50 members has been set forth by the GLCC. Unless otherwise limited by the Foreign Investment Law and its Regulations, the GLCC allows the members of any given limited liability company to either be Mexican and/or foreign, individuals or entities.

c. Management

The limited liability company's management may be vested in one ("**Sole Manager**") or more managers ("**Board of Managers**"), which can be freely removed by the company's members at any time. Whenever two or more managers are entrusted with the management of the company, they must act as a Board of Managers. The company will be legally represented by its Sole Manager or its Board of Managers, as the case may be, and its authority will be established in the company's by-laws or conferred by the members.

As in the case of corporations, some statutory limitations established by the GLCC will be applicable for the appointment of the company's Sole Manager or the managers who form the Board of Managers.

The resolutions of the managers will be adopted by the vote of the majority, unless the bylaws of the company require for the managers to act jointly, for which the unanimous vote of the managers will be required.

d. Annual members meeting

The members meeting is the supreme authority of the company. Its resolutions will be adopted by the vote of the majority of the members representing at least half of the capital, unless the bylaws require a special majority. The members of a limited liability company must hold a meeting at least once a year at the time set forth in the bylaws of the company.

4. SAPIs

SAPIs are corporations that can be incorporated as Investment Promotion Corporation or adopt the SAPI regime, in accordance with the provisions of the Securities Market Law ("**SML**") and for all not provided in such law, by the GLCC. While the SAPIs do not need to register its securities with the National Securities Registry or NSR, they may request the registration in the NSR of its shares or credit instrument representing such shares by adopting the SAPIB regime.

SAPIs must transform to SAPIBs in order to list its shares in a stock exchange. SAPIs are not subject to the surveillance of the National Banking and Securities Commission, unless their securities are registered with the NSR.

The management of SAPIs shall be vested in a Board of Directors. SAPIs may also adopt the surveillance regime applicable to SABs for the establishment of their Board of Directors, including independent members, the creation of auxiliary committees of the Board of Directors, and the appointment of an independent external auditor.

Likewise, the appointment of a member of the Board of Administration shall only be revoked by other shareholders when the revocation of all the members of the board is made, in which case the replaced members shall not be appointed with such character for a 12-month period following the revocation date.

SAPIs may, with prior approval from its Board of Directors, acquire their own shares by: (a) charging them to their net worth, in which case, the SAPIs may retain the shares and no capital reduction will be needed; or (b) charging them to their paid-in capital, provided that such shares are cancelled or converted into issued unsubscribed shares held by the treasury of the SAPI.

SAPIs are subject to a regulatory framework different than that applicable to corporations (***Sociedades Anónimas***) in accordance with the GLCC with respect to minority rights. Some of the differences are as follows:

(a) The right to appoint or revoke the appointment of a member of the Board of Directors and a Statutory Examiner (in its case), for shareholders holding at least 10% of the total voting shares, inclusive of limited or restricted vote (at least 25% in the case of ordinary corporations).

(b) The right to request the call to a general meeting of shareholders (or extend the voting of its resolutions for up to three calendar days) resolving matters on which they are entitled to vote, for shareholders holding at least 10% of the paid-in capital of the corporation (at least 25% in the case of ordinary corporations).

(c) The right to commence civil liability claims against the administrators and/or the Statutory Examiner (in its case) in the interest of the corporation, for shareholders holding at least 15% of the total voting shares, inclusive of limited or restricted vote (at least 25% in the case of ordinary corporations).

(d) The right to judicially oppose certain resolutions of the general shareholders' meeting, as long as they are entitled to vote on said matter, for shareholders holding at least 20% of the paid-in capital of the corporation (at least 25% in the case of ordinary corporations).

Shareholders of SAPIs may enter into agreements providing for non-competition, much like S.A. agreements that (i) call and put options subject to diverse modalities; (ii) exercise of preferential rights; (iii) voting exercise covenants; and (iv) covenants for purchase and sales of its shares in public offerings.

Due to the preferential treatment of SAPIs minority shareholders, as compared to ordinary commercial corporations, as well as the institutional perception that may be derived from adherence to more modern transparency and corporate governance standards, SAPIs may constitute an attractive corporate sub-type entity for some investors.

5. SAPIBs

In the event a SAPI wishes to register its shares (or instruments representing them) in the NSR and list them on the stock exchange, the SAPI must comply with the requirements applicable to SAPIBs. SAPIBs may operate for a maximum of 10 years before transforming to SABs. The purpose of this term is to provide SAPIBs a transitional period during which they can adopt the corporate governance and administration measures required to comply with the entirety of the regulations and meet the entirety of the obligations applicable to SABs.

To become SAPIBs and hence subject to registration with the NSR, SAPIs shall:

(a) Request registration with the NSR and to that effect adopt the information disclosure requirements set forth by the NBSC.

(b) Resolve the following statements through a shareholders' assembly: (i) adding the expression "Bursátil" or its abbreviation, the letter "B", to the denomination of the corporation; (ii) adopting the SAB form within a term not exceeding 10 years as of the date of recording with the NSR or before, if the net worth at close of the corresponding year exceeds the equivalent in MXN 250 million of investment units ("**UDIS**") pursuant to its audited financial statements; (iii) progressively adopting the regulatory regime applicable to SABs in accordance with the rules set out by the stock exchange and modifying the by-laws of the SAPIB to adequate the integration of the capital stock to the regime applicable to SABs.

(c) Have at least one independent member of the Board of Directors.

(d) Appoint a corporate practice compliance committee (which shall also have the duties of the auditing committee if so decided by the corporation) to be presided over by an independent member of the Board of Directors.

(e) Validate that the secretary of the board has authenticated the number of shares held by each shareholder.

Once registered with the NSR, in order to be traded in the stock exchange with or without public offering, a SAPIB shall:

1. Prepare a placement prospectus or informative document establishing its differences as compared to SABs and the terms and conditions for the implementation through time of the program for the compliance of the requisites applicable to SABs.
2. Obtain the approval of the Mexican Stock Exchange for its program, contemplating the progressive adoption of the regime applicable to SABs. This program must comply with the requirements established in the internal regulations of the Mexican Stock Exchange.

6. SABs

The SML establishes that corporations that are not SAPIBs, and whose shares are registered before the NSR, shall add to their corporate name the word "Bursátil" or its abbreviation "B". In other words, any company having such word or abbreviation in its corporate name will indicate its being a publicly held company (be it an SAPIB or an SAB). In the past, publicly held corporations were known only as issuer or securities corporations.

The modifications most relevant to the organizational and functional regime of the SAB include the following:

a. Creation of consortiums

Group of companies that are part of the same economic unit are characterized for purposes of the SML, as a consortium, that is a single economic management and decision unit. Consequently, the SML shall be applied to them on a consolidated basis, mainly in aspects such as (i) the disclosure of information (given that any event that affects the value of any of the subsidiaries will affect the value of the consortium); (ii) the auditing and corporate practices roles of the Board of Directors (so that the operation policies with respect to related parties are observed among all members of the whole consortium); and (iii) consolidated accounting.

b. Duties of the Board of Directors

The role of the Board of Directors is modified by vesting upon it the following duties (related to the strategy and surveillance of the corporation, as opposed to the regime set out by the GLCC for ordinary commercial corporations and in accordance with the operational reality of publicly held companies):

1. Establish general strategies and policies relevant to the operation of the business.
2. Approve relevant transactions or those which SABs enter into with related parties, taking into consideration the prior opinion of the corresponding committee.
3. Oversee the management and governance of the SAB.

c. Duties of the General Manager

The General Manager (as the main officer of the SAB) shall be responsible, among other things, for:

1. Management, conduct and execution of the day-to-day business.
2. The existence and maintenance of the accounting, control and registry systems.
3. The compliance of the resolutions adopted by the Board of Directors and the shareholders' meetings, and the disclosure of relevant information.

d. Surveillance

One of the main changes is the removal of the Statutory Examiner and the distribution of the surveillance duties of the SAB among the Board of Directors, the auditing and corporate practices committee or committees, and the independent external auditor. Hence, surveillance duties for the management, conduct and operation of the business of the SABs and other legal entities controlled by the SABs is vested in the Board of Directors through the committee or committees created to carry out the activities related to corporate practices and auditing, as well as through the legal entity that performs the external audit of the company, based on the competencies that correspond to each of them.

e. Integration of Board of Directors

The Board of Directors shall be formed by a maximum of 21 members out of whom at least 25% shall be independent directors not having conflicts of interest with the SAB.

f. Integration of committees

Committees shall be formed by a minimum of three independent counselors not having conflicts of interest with the SAB, to guarantee the impartiality of their recommendations (although such recommendations are not binding on the Board of Directors). However, if the Board of Directors does not comply with the recommendation of a committee, this fact must be disclosed to the stock market.

g. Duty of loyalty and duty of care

The functions and responsibilities of the directors and officers of the SAB are regulated. The governing principles of their positions are to: (a) create value for the SAB; and (b) act in accordance with duty of loyalty and duty of care principles, subject to the business judgment rule.

i. Duty of care

In general terms, the duty of diligence that should govern the actions of members of the Board Directors of SABs consists in their obligation to conduct themselves in good faith and place the interests of the SAB above their own. To this end, directors are entitled to secure the information they deem necessary to make decisions, request the appearance of relevant officers, and postpone meetings of the board when justified causes exist, and deliberate and vote. In certain cases, abstaining from attending the meetings of the Board of Directors or the committees, failure to disclose relevant information to the board or the committees and failure to comply with their statutory obligations translate to breaches of the duty of care.

ii. Duty of loyalty

In general terms, the duty of loyalty, which extends to members and the secretary of the Board of Directors of SABs, consists of the obligation to (i) maintain confidentiality of corporate matters in respect of which they gain knowledge in the exercise of their corporate duties; (ii) abstain from acting in a manner inconsistent with conflict of interest rules; and (iii) inform the audit committee and the external auditor about any irregularities with the company or the consortium of which they become knowledgeable during the exercise of their appointment.

h. Minority rights

1. At least 5% of shares is needed to exercise a civil action against directors and officers.
2. Relevant information and relevant events are disclosed to provide fair treatment of stock market participants and allow them to attain a better knowledge of the financial standing of the SAB.

Hostile takeover protection clauses are allowed when: (i) they are adopted in an extraordinary shareholders' meeting; (ii) no more than 5% of the shareholders present at the meeting have voted against it; (iii) they do not exclude from the benefits of such clause a shareholders' group different from those who pretend to achieve the control; and (c) they do not obstruct in an absolute manner the corporate control of the SAB.

Taxes

1. Treaties

Mexico has executed treaties for the avoidance of double taxation with various countries, including the United States, Canada, and most OECD countries. Those treaties establish different rules for taxation of permanent establishments and of Mexican-sourced income (e.g., withholding rates on dividends, royalties, and interest) derived by residents of the signatory countries. The relevant tax treaty must be reviewed to determine the applicable rates. Absent such a treaty, the rules of the Mexican Income Tax Law ("ITL") will govern, as discussed below.

Likewise, Mexico is signatory of the OECD Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting ("MLI") which was ratified by the Mexican Senate on November 22, 2022. The MLI entered into force on July 1st, 2023, but its effects commenced as of January 1st, 2024.

It should be noted that in the past years, in line with the Internationally Agreed Tax Standard adopted by the Global Forum of Transparency, Mexico has executed several Tax Information Exchange Agreements with different countries for purposes of promoting international cooperation in tax matters through exchange of information. Some of these TIEAs have been executed with countries like Netherlands Antilles, the Bahamas, Bermuda, Isle of Man, Cayman Islands, Cook Islands and Guernsey, despite the fact that they remain on Mexico's blacklist.

2. Corporate income tax

a. Corporations

Individuals and legal entities are subject to the payment of Corporate Income Tax when: i) they are Tax Residents of Mexico with respect to their worldwide net income (that is, gross income minus allowable deductions); ii) they are foreign tax residents with a permanent establishment (tax presence) in Mexico with respect to the income attributable to such permanent establishment; and iii) they are foreign tax residents with Mexican-sourced income but do not have a permanent establishment in Mexico, or if such income is not attributable to a permanent establishment.

The general Corporate Income Tax rate is 30% for legal and corporate entities, whereas the rate applicable for individuals may range from 1.92% to 35% depending on the net income/revenue of the individual. Recognizable income includes income in cash, in kind, service, credit (i.e., when accrued) or any other form.

The basis of the tax is equal to the recognizable income minus allowable deductions and the previous year's net operating losses.

The allowable deductions include, among others, returns, discounts, and rebates; cost of goods sold; expenses, net of discounts, bonuses, or returns; depreciation and amortization; bad debts; certain losses; accrued ordinary interest and penalty interest with certain requirements; annual inflationary adjustment; and net operating losses. Mexico is a formalistic country and, consequently, several requirements apply for the deductions to be allowed.

All deductions must be strictly indispensable for the activities carried out by the taxpayer, supported by invoices that meet specific requirements, recorded in the accounting books of the taxpayer, and paid with check or credit/debit/service card or by wire transfer. In addition, the taxpayer must comply with withholding and reporting obligations, if applicable, among other obligations. Other deductions must meet the specific requirements established by the ITL.

Some expenses are not allowed as deductions. Such is the case, for example, with taxes, conventional penalties, goodwill, fringe benefits (deductible in up to 53% of the expense), as well as payments made between related parties or through a structured agreement, when the income of its counterparty is subject to Tax Haven Regime, among others.

b. Dividends

Dividends distributed by Mexican companies to foreign residents or Mexican individuals are subject to a 10% withholding tax. This withholding tax is applicable to the shareholder or equity quota holder, as the case may be, and it is not an additional tax to the entity distributing the dividends. Dividends paid to another Mexican legal entity will not be subject to the 10% withholding tax. This tax also applies to profits distributed by permanent establishments to their headquarters or other permanent establishments of foreign residents. If the dividends originated from profits generated until December 2013, such dividends will not be subject to this tax. The dividend tax may be reduced or even eliminated if the shareholders or partners are residents of a country with which Mexico has signed a treaty for the avoidance of double taxation.

If the dividends are distributed from a net after-tax profit account, the dividends being distributed will not be subject to any additional corporate income tax applied to the company. However, if the dividends being distributed do not derive from the net after-tax profit account, the dividend being paid will be subject to the corresponding corporate income tax in addition to the 10% withheld to the recipient of the dividends.

c. Tax withholdings

Royalties, license fees or other compensation paid by a Mexican licensee to a non-resident for unpatented technology, software or technical assistance are subject to withholding tax at the rate of 25%. Royalties paid to a non-resident for patents, trademarks, trade names or for advertising are subject to withholding tax at the rate of 35%. Under most tax treaties that Mexico has entered into, the rate on royalty payments (as defined in those treaties) drops to 10% of the gross amount of the royalty.

Interest payments to non-residents are subject to withholding tax at 4.9%, 10%, 15%, 21% or 35%, depending on the type of payee or payer. Under Mexican law in general, if the payee is a foreign bank or any other financial institution that is the beneficial owner of the interests and provides the Ministry of Finance certain information regarding loans granted to Mexican residents, the interest payments will be subject to withholding tax at the rate of 10%. According to the ITL, this percentage could be reduced to 4.9% in case the beneficial owner is a resident for tax purposes of a country that has executed a Double Taxation Treaty with Mexico, and the special requirements set forth in such treaty to apply the rates regarding interests are fulfilled. If (i) the payer is a credit institution (and the payee is other than a bank or financial institution that provides the required information to the Ministry of Finance to which the 10% tax rate applies); (ii) the payee is either a foreign supplier of machinery and equipment that form part of the fixed assets of the payer; or (iii) the payee is a foreign entity that finances the purchase of such machinery and equipment or provides certain working capital financing pursuant to an agreement that sets forth these circumstances and the entity provides certain information to the Ministry of Finance, the interest payments will be subject to withholding at the rate of 21%.

In all other cases, interest is subject to withholding tax at the rate of 35%. These rates may be lower in the case of countries with which Mexico has tax treaties. For example, under the US - Mexico Tax Treaty, the rates may be 4.9%, 10% or 15%.

Payments to residents of tax havens are generally subject to a 40% withholding tax, except for certain interest and for dividends.

d. Sale of shares

Generally, the sale of shares of a Mexican company is subject to Mexican income tax, regardless of the country where the sale takes place. Foreign residents who sell shares of Mexican companies are subject to a 25% tax on the gross proceeds from the sale, or at the option of the foreign resident if it has a local representative in Mexico, to a 35% tax on the net gain derived from the sale. This option is not available to foreign sellers domiciled in a tax haven jurisdiction or a jurisdiction with a territorial taxation system. Under certain conditions, tax rulings may be available to defer payment of taxes in transfers of shares in reorganizations between members of the same group of companies.

The net gain is determined by subtracting from the gross sale proceeds the seller's tax basis in the shares sold, adjusted for inflation and other factors as determined in the ITL. Under this alternative, the party transferring the shares or quotas is required to appoint a legal representative in Mexico. It is also required to file a tax return with respect to the sale or exchange shortly after the transaction and obtain a fiscal certification ("dictamen fiscal") from a Mexican certified public accountant to the effect that the gain as reported on the tax return is correctly calculated. If transactions are made between related parties, the certified public accountant will need to certify in the dictamen fiscal that the adjusted tax cost of the shares has been calculated correctly and that the shares have been properly valuated in accordance with the arm's-length principles set forth in Mexican law for purposes of determining the shareholder's gain or loss on the exchange.

e. Interest deductibility limitations

i. Thin capitalization rules

Thin capitalization rules have been in effect in Mexico since 2005. In essence, the rules disallow the deduction of interest corresponding to debts with non-resident related parties when the total amount of all debts generating interest exceeds three times the taxpayer's book net worth. In addition, taxpayers may be entitled to use the sum of the average balances of their capital contributions account (CUCA) and their (CUFIN) to determine the 3:1 debt-to-equity ratio instead of taxpayer's book net worth. These rules, however, do not apply to entities that form the financial system and provided that such debts are contracted to carry out their business activities, as well as in those cases in which debt is contracted for productive infrastructure related to strategic areas of Mexico and for the generation of electric power. Interest must be established at arm's length. Interests might be re-characterized as dividends if they derive from back-to-back loans, of which Mexican law has a very broad concept.

ii. Net interests

A limitation on the deductibility of interests was added in Section XXXII of Article 28 of the Mexican Income Tax Law, as of January 2020.

This limitation is Mexico's response to Action 4 of the Base Erosion Profit Shifting (BEPS) initiative raised by the Organization for the Economic Cooperation and Development (OECD). Specifically, Action 4 of the BEPS initiative addressed the limitation of base erosion involving interest deductions and other financial payments.

Section XXXII of Article 28 of the ITL, limits the deductibility of accrued interest expense through the comparison of a parameter known as net interests versus the amount resulting from multiplying an adjusted tax profit ("UFA" for its Spanish acronym) by 30%. The first paragraph of Section XXXII of Article 28 of the ITL states that the net interest exceeding the 30% of the UDA will not be deductible.

Said formula represents a limitation to the accrued interest expense in a given fiscal year.

Section XXXII of Article 28 of the ITL contains a minimis rule in its second paragraph by means of which the limitation would only apply for taxpayers whose accrued interests expense during the fiscal year, exceed MXN 20,000,000. The minimis amount is to be distributed among the entities belonging to the same group or that are related parties, so the minimis amount per entity may be lower.

Only the highest restriction between the one stated in Section XXXII of Article 28 of the ITL and thin capitalization will be applied in each fiscal year.

f. Transactions and investments related to tax havens

Beginning in 1996, Mexico's tax reforms incorporated several provisions aimed at eliminating or controlling investments in and transactions with companies that are located in low-tax jurisdictions. Mexico considers a low-tax jurisdiction or preferential tax jurisdiction to be a country where the income tax actually paid is less than 75% of the tax payable in Mexico for the same income. These tax provisions may affect shareholders, trust beneficiaries or other entities or individuals who are tax residents in Mexico or have a permanent establishment in other countries and receive income from legal entities or from entities that the ITL considers as transparent entities.

g. Transfer pricing

Mexican taxpayers entering into transactions with related parties must, for tax purposes, charge or pay the prices that would be agreed to between independent parties in comparable transactions. These taxpayers are required to prepare and keep current documentation supporting the prices charged or paid.

h. Transfer pricing rules applicable to maquiladoras

Maquiladora's operations generally create a permanent establishment in Mexico for the foreign principal that provides the raw materials and machinery and equipment to the maquiladora company, which would expose such foreign resident to income tax in Mexico. An exemption from constituting a permanent establishment in Mexico for the foreign resident is available provided that the maquiladora complies, among other requirements, with special transfer pricing requirements.

To this end, maquiladoras shall determine their income fee by following the so-called safe harbor method, which states that the maquiladora must generate a tax profit equal to the greatest amount equivalent to either 6.9% of the value of the assets used in their activity or 6.5% of the amount of ordinary costs and expenses of their operation.

The special safe-harbor rule is only applicable with respect to maquiladora operations, as defined in the ITL, carried out by the maquiladora.

The ITL provides specific conditions in order to have a maquila operation concept for income tax purposes and to exempt its foreign related party from a permanent establishment in Mexico. These conditions include the following:

- Undertaking of transformation activities as defined by the MITL.
- Utilization of raw materials furnished by the foreign principal, with the obligation to export physically or virtually (to another maquiladora) 100% of the productive output.
- At least 30% of the machinery and equipment used by the maquiladora shall be owned and provided by the principal (in case a maquiladora has maquila operations with several principals, this 30% shall be complied by each principal). The remaining machinery and

equipment may be owned by a third party residing abroad that has a manufacturing commercial relationship with the principal. In no case such machinery and equipment may have been owned by another enterprise residing in Mexico that is related to the maquiladora.

- The totality of the maquiladora's income from productive activities must derive from maquila operations.
- The foreign principal's tax residence in a country with which Mexico has in place a tax treaty.
- The maquiladora and the principal must be related parties.

If the maquiladora performs other activities that are not deemed as maquiladora operations or fails to comply with the above-mentioned requirements and conditions, the maquiladora must comply with general transfer pricing rules.

Multinational groups within the scope of OECD's pillar two should carefully analyze the implications under pillar two rules for maquiladora regimes. Particularly, they should analyze whether the exemption from constituting a permanent establishment in Mexico for the foreign resident would be deemed as a Constituent Entity under the Stateless Constituent Entity rules, to understand the implications and identify pottential planning strategies.

3. Value added tax

Mexico imposes a value added tax on the following activities:

- Sale of goods
- Lease of goods
- Rendering of services
- Importation of goods or services

The general rate is 16% of the value of the subject matter transaction. A 0% rate applies in certain limited cases, mainly related to exportation of goods and services, as well as food and medicines. VAT is levied on a cash-flow basis.

VAT exemption applies to certain other transactions including the sale of temporarily imported goods between non-residents of Mexico, and the sale of land, company shares and equity quotas, among others. VAT normally operates by having each party in the chain of production charge the tax to its customer and pay to the tax authority the difference between the tax charged by its suppliers and the tax charged to its customers, on a monthly basis. VAT on all purchases, rentals, services and imports may be creditable to the extent that the specific expense is tax deductible.

With respect to the maquiladora industry, VAT is assessed at the regular 16% rate on temporary imports; the exportation of service (the manufacturing fee) is subject to a 0% VAT rate. However, as explained below, maquiladora companies that secure a special VAT certification will not have to make a cash disbursement for the temporary importation of goods.

VAT paid on imports is assessed on the customs value of the import plus the import duty. Because the importer is entitled to credit all VAT paid against VAT collected from its customers, the ultimate burden of the VAT is effectively passed along to the importer's customers and from there to the end consumer.

a. VAT credit during preoperative periods

The VAT Law establishes requirements and conditions for the crediting of VAT regarding expenses and investments made during preoperative periods.

Taxpayers may credit the VAT triggered prior to the start of their business activities until the date they make their first transactions subject to VAT (commercial transactions exempt from VAT are not considered for the purpose of claiming VAT credit).

Also, taxpayers can choose to request the VAT crediting that was transferred to them during the preoperative period, provided that the conditions established by the VAT Law are met. For such purposes, taxpayers must submit the information indicated in the VAT Law together with their initial request for VAT refund.

In the event that taxpayers fail to carry out VAT able transactions within a term of 12 months following the initial VAT refund, they shall reimburse the recovered preoperative input VAT. However, the taxpayer would remain entitled to obtain a new refund of such amounts once they start business operations subject to VAT. Taxpayers dedicated to hydrocarbon exploration and extraction would be exempted from certain conditions for the VAT credit during preoperative periods when the extraction is not feasible or when, due to economic circumstances not attributable to the company, the extraction of hydrocarbons becomes unaffordable. Other taxpayers that foresee that their preoperative period would last more than 12 months may apply to the tax authority for an authorization in order to avoid a reimbursement of the refunded VAT.

b. Digital economy VAT regime

As of June 1, 2020, the VAT Law provides that certain “digital services” will be considered rendered in Mexican territory when the recipient of the services is located in Mexican territory. Services should be provided through digital applications or digital content through internet or other network, essentially automatized, with or without minimal human intervention. Only four different types of services will be deemed “digital services” for the purposes of the VAT Law:

- i Downloading or access to images, movies, texts, information, video, audio, music, games, including gambling games, as well as other multimedia contents, multi-gaming experiences, purchasing or otherwise procuring mobile ringtones, streaming news online, traffic information, forecasts, weather forecasts and statistics. This provision does not apply to the download of electronic books, newspapers, or magazines;
- ii Intermediation services between (i) third parties that offer goods or services, and (ii) the recipients of these goods or services;
- iii Online clubs and dating websites; and
- iv E-Learning, electronic tests, or electronic exercises.

The recipient of the abovementioned digital services will be deemed to be located in Mexico when any of the following occurs:

- i the recipient has provided information to the service provider indicating a domicile in Mexico;
- ii the recipient makes payments to the service provider through an intermediary located in Mexico;
- iii the IP address utilized by the recipient’s electronic devices is located in Mexico; or
- iv the recipient provides a phone number with a Mexican country code.

Foreign residents without an establishment in Mexico that provide digital services to recipients located in Mexican territory must, among other obligations, register in Mexico and charge 16% VAT to their recipients. Foreign resident digital platforms acting as intermediaries will be subject to additional withholding obligations when the vendor is a Mexican resident individual (or and individual with a permanent establishment in Mexico).

4. Tax incentives

Tax incentives have been granted by the Mexican government to promote investments and development of certain types of industries and projects. There are incentives for maquiladoras, Technology Research & Development ("TRD") projects in the film and entertainment industries; those who hire handicapped employees and adults who are 65 years old; as well as real estate investment trusts, among others.

The maquiladora industry enjoys a tax incentive that grants an additional deduction equivalent to 47% of the fringe benefits paid to employees when, in turn, they represent exempt income for such employees, which represents a potential deduction of 100% of said payments. Otherwise, the deduction of fringe benefits would be limited up to 53% of the expense.

Taxpayers that employ handicapped individuals whose limited capacity has been certified by the Mexican Institute of Social Security are allowed to take a deduction towards their own income tax an amount equivalent to 100% of the withheld and remitted income tax of said handicapped employees.

Taxpayers that build or acquire real property intended for lease or its subsequent sale through a trust are granted a tax incentive that includes an exemption from estimated income tax payments. The application of these benefits are contingent on various requirements, such as: (i) the trust must be created pursuant to Mexican law; (ii) 70% of trust capital must be allocated to acquire real property for lease and subsequent sale, and the remainder of capital must be invested in federal government securities; the buildings/constructions or acquired real property are intended for leasing purposes and are sold after a four-year period has elapsed; (iv) the trust issues participation certificates for the assets in the trust's patrimony, and such certificates are publicly traded or acquired by a group of (at least 10) investors that are not related parties and none of whom controls more than 20% of such certificates; (v) the trust distributes at least once per year 95% of the taxable income of the previous fiscal year generated by the assets in the trust's patrimony; (vi) when variable amounts or amounts referred to as percentages are included in the leasing agreements to determine the consideration or rent payments, these concepts may not exceed 5% of the total amount of the trusts' annual rent income; and (vii) the trust is registered in the "Trust Registry" for the construction and acquisition of real estate.

In general terms, the tax incentive to TRD consists of a tax credit equivalent to 30% of the incremental expenses made in the fiscal year in TRD, applicable against the income tax triggered in the fiscal year in which such tax credit is determined. This tax incentive can only be applied on the incremental basis of the expenses and investments made in the corresponding year, with respect to those made in the previous three fiscal years, and should not be accumulated for purposes of income tax. The TRD projects and expenses that can benefit from this tax incentive are those that comply with the guidelines established for this purpose by the National Science and Technology Council ("CONACYT") and an Institutional Committee. Note that the above are the main tax incentives that taxpayers doing business in Mexico may apply for; additional sector-oriented tax incentives are also available under federal and local laws.

a. North Border Region Tax Incentives Decree

On 31 December 2018, the North Border Region Tax Incentives decree was published in the Federal Official Gazette, which granted the following fiscal incentives to taxpayers who carry out operations within the municipalities adjacent to the border with the United States of America:

- For the Income Tax, a tax credit consisting of one third of the caused tax will be granted, which may be applied against the provisional payments or the annual tax for the year, in the proportion that represents the total income of the Northern Border Region with respect to the total income of the taxpayer. For this purpose, the taxpayer must request their registration in the "Registry of Beneficiaries of the Stimulus for the Northern Border Region";
- For Value Added Tax (VAT), a tax credit consisting of 50% of the applicable VAT rate will be granted to taxpayers. For administrative simplification, the tax credit will be applied directly to the VAT rate to reduce it from 16% to 8% at the time of transferring VAT on the sale of goods and services, or on leasing, in the Northern Border Region. For purposes of applying the VAT incentive, taxpayers must submit the corresponding notice to the Tax Administration Service.

These Tax incentives remained in force during the years 2019 and 2020.

Furthermore, by means of a decree published on the Federal Official Gazette on 30 December 2020, the validity of said incentive was extended until 31 December 2024.

Through the decree of Fiscal Incentives of the Southern Border Region dated 30 December 2020, the same incentives were granted to the municipalities of the southern border region of the country.

b. Isthmus of Tehuantepec region tax Incentives Decree.

On June 5, 2023, the gobernment issued a decree promoting investments to carry-out productive activities within the Isthmus of Tehuantepec Region. The main objective is to enhance the regional economy, taking advantage of the strategic position of the Isthmus of Tehuantepec to compete with world markets for the mobilization of goods, through the combined use of means of transport.

The main tax benefits under the decree are:

- A tax credit equivalent to 100% of the Income Tax triggered during the first three years, reduced to 50% during the three subsequent years (or up to 90% in case certain requirements are met).
- A tax credit equivalent to 100% of the Value Added Tax for taxpayers that sale goods, provide services or lease goods to persons who carry out productive economic activities within the region. The tax credit can be applied for four years from the entry into force of the decree.
- Immediate deduction of 100% of investments in new fixed assets, applicable during the first six fiscal years. Certain fixed assets are excluded such as furniture and equipment, automobiles, automobile armoring equipment or any fixed asset property not individually identifiable,

c. Nearshoring Tax Incentives Decree.

On 11 October 2023, President Andrés Manuel López Obrador published a decree in the Federal Official Gazette granting a tax incentive for the "accelerated depreciation" of fixed assets and an additional deduction of 25% of the increase in expenses incurred for training workers.

The accelerated depreciation incentive can be claimed by companies that are engaged in the production, processing, or manufacturing for export of goods within the following specific catalog of industries:

- Products intended for human and animal nutrition,
- Fertilizers and agrochemicals,
- Raw materials for the pharmaceutical industry and pharmaceutical preparations,
- Electronic components, such as simple or loaded cards, circuits, capacitors, resistors, connectors and semiconductors, coils, transformers, harnesses and modems for computers and telephones,
- Clock machinery, measuring, control and navigation instruments, and electronic medical equipment for medical use,
- Batteries, accumulators, electrical conduction cables, plugs, contacts, fuses and accessories for electrical installations,
- Gasoline, hybrid and alternative fuel engines for cars, vans and trucks,
- Electrical and electronic equipment, steering systems, suspension, brakes, transmission systems, seats, interior accessories and die-cast metal parts, for automobiles, vans, trucks, trains, ships and aircraft,
- Internal combustion engines, turbines and transmissions, for aircraft.

Companies may choose to apply the accelerated depreciation if they estimate that during the fiscal years of 2023 and 2024, the amount of revenue from exports of goods that are within the catalog of activities will represent at least 50% of their total revenue in each fiscal year.

The tax incentive allows the "accelerated depreciation" of new fixed assets, acquired from 12 October 2023 through 31 December 2024.

The decree provides different "accelerated depreciation" percentages for different categories of assets, so taxpayers are entitled to deduct up to the applicable percentage in the first year, instead of applying the rates indicated in the Income Tax Law (the preferential percentages vary depending on the type of good and the industry in which they are used, in the range between 56% and 89%).

Moreover, the decree grants an additional deduction to companies that are dedicated to the industries included in the decree consisting of 25% of the increase in expenses incurred for training workers. For this purpose, the increase will be calculated as the difference between the expense incurred for training in the relevant fiscal year and the average expense incurred for training in fiscal years 2020, 2021 and 2022.

To apply both tax incentives, taxpayers must submit a notice opting for the application of the tax incentives no later than thirty calendar days immediately following the month in which the incentives are claimed for the first time. Taxpayers can only apply the tax incentives established in the decree if they submit the notices in a timely manner.

5. Employee profit sharing

Under the Mexican Federal Constitution, employees are entitled to participate in the profits of the employer. This is commonly known as "**PTU**" (the Spanish acronym for "*Participación de los Trabajadores en las Utilidades*").

Employers have the obligation to pay an amount equal to 10% of their taxable base to their employees within 60 days after the employer is required to file its year-end income tax return. 50% of the amount to be paid is required to be distributed in proportion to the number of days worked by each employee during the year, and the remainder according to the wages of each employee. Newly created companies are exempted from PTU during their first year of operation.

Corporate taxpayers are allowed to deduct the employee profit sharing paid during the tax year from income tax taxable profits. The PTU paid, however, is not deductible for purposes of determining the basis to calculate the PTU of neither the tax year in question nor the tax losses pending to be applied from previous tax years.

6. Payroll tax

Although taxed at a state level, most, if not all, states in Mexico have a payroll tax. The basis for this tax is usually all wages and other benefits that are paid to an employee. Rates vary from state to state but generally can range between 2% and 3%.

7. Special tax on production and services

The sale and importation of flavored beverages with sugar added, including among others, soft drinks, powders and syrups is deemed a taxable activity for purposes of this tax. The tax will be MXN 1 per liter.

The sale and importation of certain "non-basic food" with high caloric values (275 kilocalories per 100 grams) has also been included as a taxable activity beginning fiscal year 2014. According to the law, the following items, among others, are deemed "non-basic food": snacks, chocolates, ice creams, custards, puddings, fried food, pastry, milk sweets and cereal-based food. The tax rate is 8% on the sales price.

The sale and importation of fossil fuels (propane, butane, gasoline, avgas, turbosine, and other kerosene, diesel, fuel oil, oil coke, coal coke, mineral coal and other fossil fuels that include any other derived from oil and mineral coal destined for a combustion process) will be subject to this tax as of fiscal year 2014. This tax can be paid by the delivery of carbon credits when these derive from projects developed in Mexico and endorsed by the United Nations.

This tax is also imposed, as of fiscal year 2014, on pesticides that have a toxicity level of one to four. The rates vary depending on the toxicity level of each pesticide. For example, for pesticides that are levels one and two, the rate is 9%; for level three pesticides, the rate is 7%; and for level four pesticides, the rate is 6%.

8. Mining fees

Holders of mining concessions will be subject to an annual "special mining fee" at a rate of 7.5% on the positive difference from reducing income originated by the sale of the extraction activity, as well as certain deductions pursuant to the ITL, except for: (i) investments, excluding exploration and prospecting expenses; (ii) interest accrued during the fiscal year, without any adjustment and default interest; and (iii) the deductible annual inflation adjustment.

An "additional mining fee" will have to be paid by holders of mining concessions who do not carry out work and exploration or development activities pursuant to the Mining Law during two consecutive years within the first 11 years of the mining concession. In this case, the additional mining fee is equal to 50% of the amount set forth in Article 263-VI of the Federal Law on Fees per hectare granted under concession and will be payable on a six-month basis. For holders of concessions of 12 years or more, the fee is equal to 100% of said amount. Holders of mining concessions will be subject to an annual "extraordinary mining fee" at a 0.5% rate on the total income derived from the sale of gold, silver and platinum, without any deduction.

9. Anti-abuse Rule

Article 5-A of the Mexican Federal Fiscal Code includes anti-abuse rules through a mechanism where Mexican tax authorities ("SAT") are entitled to, during a formal audit, re-characterize legal acts that lack business reasons and that generate a direct or indirect tax benefit to those that correspond to the reasonably expected economic benefit for the taxpayer.

The resolution following the tax audit as to whether or not a given transaction or structure lacks business reasons must be issued by a special committee comprised of Mexican tax authorities, (Hacienda) and **SAT** officials and must be informed to the taxpayer before the closing of such audit in order to allow the rebuttal of such assessment/presumptions regarding lack of business reasons.

In terms of Article 5-A, the following rebuttable presumptions apply:

- Lack of business reasons based on facts and circumstances known during audit process.
- Lack of business reasons will be presumed when the quantifiable and expected economic benefit is lower that the tax benefit.
- Multi-step transaction lacks business reasons.

In other words, Mexican tax authorities will be entitled to presume the lack of business reasons when the quantifiable economic benefit is less than the tax benefit and when the reasonably expected economic benefit could have been achieved through the performance of a lower number of legal acts and the tax effect of those acts would have resulted in a higher burden.

The business reason concept is not new when it comes to a tax audit conducted by tax authorities. In recent years, it became common for tax authorities to question the business reasons of a given transaction because said concept could be linked to the requirement of any deduction being strictly indispensable or could lead to the conclusion of a transaction lacking economic substance. In addition, certain Mexican federal courts have ruled that in fact business reason has to be proven in order for a deduction to be strictly indispensable.

With the inclusion of a definition of "business reason" in the tax law, tax authorities will be able to re-characterize a given transaction and its Mexican tax effects. This, without even considering other aspects such as commercial reasons, market implications, economic and political environment, that, in fact, could be considered by an enterprise or a multinational to actually perform a business transaction in addition to any economic benefit that could be expected.

10. Reportable Transactions

Since January 2021, an obligation related with reportable transactions was included in the Mexican Federal Fiscal Code, which provides the obligation for tax advisors to disclose generalized reportable transactions or custom reportable transactions. In addition, some exception cases were included, in which the taxpayers will be responsible of disclosing a reportable transaction.

In accordance with Article 199 of the Federal Tax Code, any plan, project, proposal, advice, instruction or recommendation expressly or tacitly expressed in order to materialize a series of legal acts is considered a reportable transaction. The carrying out of a procedure before the authority or the defense of the taxpayer in tax disputes is not considered a reportable transaction.

Generalized reportable transactions are those that seek to be massively marketed to all types of taxpayers or to a specific group, and although they require minimal or no adaptation to adjust to the specific circumstances of the taxpayer, the way to obtain the tax benefit is the same. Custom reportable transactions are those that are designed, marketed, organized, implemented or administered to adapt to the particular circumstances of a specific taxpayer.

For any transaction to be reportable, it must trigger or be able to trigger, directly or indirectly, a tax benefit in Mexico and must have any of the characteristics listed in Article 199 of the Mexican Federal Fiscal Code.

The penalties for tax advisors range from MXN 15,000 to MXN 20,000,000. For taxpayers, the penalties can range from MXN 50,000 to MXN 200,000.

11. Subcontracting regime

The subcontracting regime concept has evolved in the Mexican legislation in recent years, being scrutinized and strongly supervised by labor and tax authorities, to abolish elusive practices and violation to the employee's rights and benefits.

On April 23, 2021, the Mexican Labor Law, the Social Security Law, the Housing Fund Institute Law, the Federal Tax Code, the Income Tax Law and the Value Added Tax Law were reformed and enacted as of April 24, 2021 (the "Subcontracting Reform").

Some of the relevant aspects of the Subcontracting Reform are:

1. The subcontracting of personnel was prohibited (outsourcing, including the dual structure businesses -insourcing-), consequently many companies that previously subcontracted personel incorporated such personel to the operating entity's payroll.
2. Consequently, to limit employees' profit sharing ("PTU") maximum liability, the amount of PTU that companies migh pay to its employees was limited to a maximum of three months of salary, or the average PTU paid during the last three years, whichever is more favorable for the employee.
3. The subcontracting of specialized services is allowed if the services are not related with the main corporate purpose or main economic activity of the beneficiary company and the activities of the headhunter companies were strictly regulated.
4. The rendering and execution of specialized services is subject to registration before the Federal Ministry of Labor and Social Welfare ("FMLSW"). Additionally, specialized services providers must deliver periodic documentation to the beneficiary of the services to prove compliance with tax and social security obligations. The compliance of these obligations is verified by the FMLSW and the Social Security Institute, who may impose fines and collaborate with the tax authorities.
5. Payments for subcontracting of personnel overlapping with the main corporate purpose or economic activity of the beneficiary are not allowed as deductions for Corporate Income Tax purposes and the related Value Added Tax is not creditable.
6. The recipients of specialized outsourcing services are jointly liable with the service providers in connection with any omitted taxes and/or social security contributions by the employer.
7. Simulating schemes of specialized subcontracting services is considered a felony (tax fraud). The penalty for taxpayers that commit tax fraud is jail time (subject to criminal law rules and procedures).

Because of the above-mentioned reforms, the typical insourcing dual-company structures that was common in Mexico during the last decades is now prohibited, and subcontracting of personal is now limited to specialized services, provided they do not relate to the main corporate purpose or economic activity of the beneficiary company.

International trade

1. International Trade

Free trade agreements are part of Mexico's overall strategy to increase the competitiveness of its economy and to become an important player in global trade. The open economy strategy began in the mid-1980s with Mexico's adherence to the General Agreement on Tariffs and Trade. Specifically, Mexico's network of Free Trade Agreements ("**FTAs**") has allowed it to become one of the largest manufacturers of export goods in the world.

2. Imports in general

Mexican import controls have been significantly eased, but in recent years, some control measures have been implemented for certain sensitive sectors such as steel, textile and footwear. In Mexico, however, most products do not require prior import permits, and import duties have been reduced. Duties are assessed based on the customs value of the products imported into Mexico and may be reduced and/or deferred pursuant to the applicable foreign trade programs enacted by the government. All tariff and non-tariff regulations applicable to goods upon importation or exportation are determined based on the tariff classification of the goods in question. Therefore, accurate tariff classification is crucial.

Import duties and Non-Tariff Regulations and Restrictions are determine based on the tariff classification (Harmonized Tariff Schedule "HTS" code) of the merchandise. The HTS code of the merchandise is determined generally by the customs broker authorized by the Ministry of Finance and Public Credit considering the characteristics of the merchandise and the provisions of the General Import and Export Duties Law ("TIGIE" for its acronym in Spanish).

On June 7, 2022 the latest complete version of the TIGIE was published in the Federal Official Gazette ("Diario Oficial de la Federación"), which became effective on December 12, 2022. This version of the TIGIE implemented the seventh amendment to the Harmonized System to adapt the tariff schedule to new technological advances (e.g. to include electrical and electronic waste, multipurpose drones, 3D printers, etc.) and to include specific classifications for new tobacco and nicotine products, rapid test kits, dual-use goods, among others.

This TIGIE substituted the previous version of the tariff schedule, which was published on October 1, 2020 and became effective on December 28 of that same year.

Furthermore, on August 15, 2023 it was published through the Federal Official Gazette a Decree modifying the TIGIE in order to increase import duties on 392 tariff items from 5% to 25% ad valorem for products originating from countries that do not have a preferential or free trade agreement with Mexico; some of the affected sectors include still, textiles, footwear and chemicals; this tariff increase will be in effect from August 16, 2023, until July 31, 2025.

Even when the customs brokers are authorized to process customs clearance of merchandise and processing of pedimentos (i.e., import/export customs declarations), companies and individuals can process customs clearance and pedimentos without a customs broker if they are authorized to do so by the National Customs Agency of Mexico ("ANAM") and if they have a customs legal representative.

3. Importers' Registry

In order to import to Mexico, it is required to be registered in the General Importers' Registry. For the import of certain types of goods, such as: chemical products, cigars, footwear, textiles, hydrocarbons, steel products and automotive industry goods, among others, it is also necessary to register in the applicable Specific Sectors of the Importers' Registry.

To obtain the General Importers' Registry, the company must first be registered in the Federal Taxpayers' Registry ("**RFC**"), have an electronic signature provided by the Tax Administration Service ("**e.firma**"), its tax domicile must appear as "located" in the Tax Administration Service registries, and demonstrate to be in compliance with tax obligations, as well as indicating the license number of the customs broker(s) who will process the company's imports.

We highly recommend signing an agreement with each of these customs brokers, so that there is certainty regarding their responsibilities and obligations.

The requirements to obtain registration in the Specific Sectors of the Importers' Registry will depend on the applicable sector.

Rule 1.3.3 of the General Foreign Trade Rules outlines the grounds for which a company may face suspension from its Importers' Registry. This rule covers more than 47 distinct causes, with new ones being continually introduced. On December 28, 2023, an amendment was made to this rule, introducing two additional reasons for suspending importers from their registry:

1. Failure to Correct Duties: If a company fails to rectify duties paid during importation when a preferential tariff treatment was applied and a negative outcome results from an origin verification process.

2. Non-Compliance with VAT Withholdings: If the authority determines that the company did not carry out the necessary Value Added Tax ("**VAT**") withholdings in its foreign trade operations.

Kindly note that if a company holds a General Importers' Registry and is also authorized for Specific Sectors, any suspension from the General Importers' Registry will automatically extend to all other Specific Sectors. To reactivate the company's status, both the General Importers' Registry and the Specific Sectors must undergo a thorough compliance process, ensuring adherence to all corresponding requirements as in the first application.

These modifications and regulations emphasize and underscore the importance of having a strict compliance and accurate record-keeping for businesses engaged in international trade.

4. Non-Tariff Regulations and Restrictions ("NTRRs")

In order to import goods, it is also necessary to verify and if applicable, comply with the corresponding non-tariff regulations and restrictions, which include permits and notices prior to the importation of goods, permits and/or sanitary certificates, zoo sanitary, environmental, among others. These are processed before the different Ministries as applicable. In addition, it is important to consider whether technical or commercial information Mexican Official Standards ("**NOMs**") are applicable. We suggest reviewing this type of regulations prior to import, since in most cases it is necessary to demonstrate compliance upon customs clearance.

The applicability of any NTRR or NOM will depend mainly on the HTS code of the merchandise to be imported or exported. Once the HTS code is determined, it is necessary to verify if there is an exception to the NTRR or the NOM, based on the different customs provisions.

5. Customs Duties and Other Applicable Taxes

For the purpose of performing the customs clearance, it is essential to pay the customs related taxes, which may include general import duty, customs processing fees ("DTA" for its acronym in Spanish), value added tax ("**VAT**"), excise tax ("**IEPS**" for its acronym in Spanish), and in some cases, antidumping or countervailing duties, depending on the goods in question.

The DTA has different applicable rates, the most common being 0.008% of the value of the merchandise to be imported. However, in some cases a fixed amount of DTA can also apply. The general VAT rate in the importation is 16% over the customs value of the merchandise, plus the applicable import duties and antidumping duties when they apply to the goods; while the IEPS rate to be paid will depend on the HTS code of the merchandise to import.

6. Foreign Trade Promotion Programs

The main purpose of the Foreign Trade Promotion Programs is to encourage foreign investment in Mexico and increase the competitiveness of companies to enter the world market. Among the Promotion Programs in Mexico, the following stand out:

a. Manufacturing, Maquila and Export Services Industry ("IMMEX")

Program that authorizes importers to introduce into national territory the necessary materials and machinery to be used in the elaboration, transformation or repair of goods, or in the rendering of services for goods to be exported. One of its benefits is that it is not necessary to pay at the time of importation, the general import duty (regarding materials) and value-added tax (with a VAT Certification).[7] An additional benefit for companies operating under the IMMEX program is that, in certain scenarios, they are exempted from NTRRs (such as product labeling) on temporarily imported goods.

The IMMEX Program is authorized by the Ministry of Economy, through its General Direction of Foreign Trade Facilitation. Among the requirements to secure this program, the applicant must evidence to have the necessary infrastructure to carry out its industrial processes, and/or exportation services, including employees directly hired and the legal use and possession of the place where the applicant will carry out the process or service.

b. Registration in the Company's Certification Scheme

Importers may secure a special registration from SAT to operate as a Certified Company, which grants access to certain benefits that allow companies to save costs and time by being able to enjoy easier and more expedited customs clearance processes, reduction in documentation requirements, as well as certain tax and customs advantages related to the virtual exportation and importation of goods. The specific benefits granted to each company depend on the kind of modality authorized within the Registration in the Company's Certification Scheme.

i. Modality VAT/Excise tax

Modality VAT/Excise tax are complementary to the IMMEX Program and its purpose is to grant a tax credit equivalent to the amount caused by concept of VAT and/or Excise tax for the temporarily imported goods. To secure this modality, it is essential to have a previously authorized IMMEX Program and to comply with the requirements set forth by the Foreign Trade General Rules.

Without this certification, the importer must pay VAT levied upon the temporary importation of merchandise under the shelter of the IMMEX Program.

7. SAT - Value Added Tax and Excise Tax Certification

ii. Authorized Economic Operator

This is another modality of the Company's Certification Scheme that grants other kind of benefits to the importers and exporters, such as the use of a fast lane for the entrance and exit of merchandise, administrative facilitation related to the processing of pedimentos, rectification of pedimentos and Inventory Control System, issuing V5 code pedimentos (which allow virtual exportation by an IMMEX with AEO certification for further definitive import by a non-IMMEX company), avoiding immediate suspension from the importers' registry in the event that any of the suspension clauses are triggered, among others.

This modality, within the Company's Certification Scheme, is the equivalent to the Customs Trade Partnership Against Terrorism ("**C-TPAT**") of the United States of America, and the requirements for its approval are related to the security in the supply chain, the production and the exportation of the merchandise.

c. Sectorial Promotion Program ("PROSEC")

PROSECs allow importing with preferential duty rates, certain materials and machinery, regardless of their country of origin, that will be used in the production of specific finished goods; regardless also of whether the finished good will remain in national territory or will be exported.[8]

7. Mexico's free trade agreements

FTAs offer more than preferential duty access; they also provide legal certainty by giving companies the ability to predict treatment of their products and services, as well as their investments in the country of destination. FTA provisions include National Treatment for goods and investments from the other party, as well as Most Favored Nation Treatment for its goods and services. FTAs also eliminate performance requirements by removing the need to comply with national content or export requirements.

Regarding investment, Mexico's FTAs provide for the free transfer of capital without restrictions and for reimbursement in case of expropriations, as well as the creation of dispute settlement mechanisms that are a strong guarantee of justice. Some of Mexico's FTAs cover the protection of intellectual property rights, antitrust provisions and better thresholds for government procurement. Additionally, FTAs commonly require the standardization of customs documents, making import-export transactions faster and more efficient.

Currently, Mexico has 13 FTAs in force giving it preferential access to 50 countries[9], including: the United States and Canada through the new free trade agreement executed between Mexico and the above mentioned countries ("**USMCA**"); Colombia and Venezuela in 1995 (only Colombia since 2006); Chile in 1999; Israel in 2000; the European Union in 2000; Norway, Switzerland, Iceland and Liechtenstein in 2001 ("**EFTA**"); Uruguay in 2004; Japan in 2005; Peru in 2012; Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua[10] in 2012 and 2013[11]; Panama in 2015 as well as Pacific Alliance: Chile, Colombia and Peru in 2016[12]. In addition to the above, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("**CPTPP**"), has already been signed by Mexico, and now Mexico will have preferential access to import from and export to: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, New Zealand, Peru, Singapore and Vietnam in 2018.

The USMCA became effective for the United States of America, Mexico and Canada on 1 July 2020. Regarding the relevant changes of this agreement with respect to the previous one ("NAFTA"), there are significant changes in the rules of origin of the automotive industry, increased barriers to access to generic drugs in the pharmaceutical sector; in labor matters, commitment to adopt labor practices as

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8. Ministry of Economy/Secretaría de Economía - PROSEC
9. Comercio Exterior, Países con Tratados y Acuerdos firmados con México
10. DOF: 31/08/2012
11. SICE: Novedades en materia de política comercial: Centroamérica
12. SICE: Acuerdos comerciales
13. T-MEC: 3 efectos en México del Tratado de Libre Comercio con Estados Unidos y Canadá que reemplaza al TLCAN

established in the Labor International Organization and a rapid response labor mechanism to address complaints of breaches to freedom of association rights; as well as the addition of a chapter on electronic commerce and one on anti-corruption matters, among others[13].

In addition to the above, all three parties of the USMCA committed to ensuring fair labor within respective trade industries and actively banning the importation of goods produced wholly or partially with forced labor. Mexico has taken initial steps to combat forced labor by implementing provisions in this regard.

On February 17, 2023 the Ministry of Economy published through the Federal Official Gazette goods subject to regulation by the Ministry of Labor and Social Welfare ("**MLSW**") and prohibits the importation of goods produced with forced labor[14]. This regulation became effective on May 18, 2023. The Forced Labor Regulation empowers the MLSW to initiate procedures to determine if forced labor was used in the production of goods, if so, it will publish these findings as resolutions in the portal of the MLSW and goods covered by such resolutions will be prohibited from entering Mexico.

It is important to mention that as a result of the United Kingdom's withdrawal from the European Union ("**Brexit**"), Mexico and the United Kingdom executed an Agreement to Continue Trade by which both parties maintain the preferential trade regime, currently in force under the Free Trade Agreement with the European Union while a new and comprehensive FTA is negotiated between Mexico and the UK.

Additionally, it is expected that Mexico will continue seeking to strengthen its commercial relationships with other countries.

In addition to FTAs, Mexico is a signatory to multiple Agreements on the Mutual Protection and Promotion of Investments (bilateral investment treaties, or BITs in English). These agreements protect investments made by investors from signatory countries. To date, Mexico has signed international investment agreements with several countries: 32 BITs and 12 FTAs that include investment chapters.[15]

Mexico has signed BITs in Latin America and the Caribbean with Argentina, Cuba, Panama, Trinidad and Tobago, Haiti and Uruguay; in Asia and Oceania with Australia, China, South Korea, India and Singapore; in the Middle East with Bahrain and Kuwait; in Europe with Germany, Austria, Belarus, Denmark, Slovak Republic, Spain, Finland, France, Greece, Iceland, Italy, Netherlands, Portugal, United Kingdom, Czech Republic, Sweden, Switzerland, Turkey, and the Belgium-Luxembourg Union[16]. The FTAs that include an investment chapter are with Germany, Australia, Austria, Belgium, Brunei, Canada, Central America (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua), Chile, Colombia, Darussalam, Denmark, Finland, France, Greece, Japan, Ireland, Italy, Iceland, Liechtenstein, Luxembourg, Malaysia, New Zealand, Norway, Netherlands, Panama, Peru, Portugal, the United Kingdom, Spain, Sweden, Switzerland, Singapore, United States, Uruguay and Vietnam.[17]

8. Foreign Trade Law

Mexico enacted its Foreign Trade Law ("FTL") on 28 July 1993. The FTL regulates international trade and prohibits unfair trade practices such as dumping and trade subsidies. Additionally, it contains provisions on non-tariff regulations and restrictions. The FTL follows GATT principles and was developed to conform to the requirements of NAFTA.

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13. T-MEC: 3 efectos en México del Tratado de Libre Comercio con Estados Unidos y Canadá que reemplaza al TLCAN
14. DOF: 17/02/2023
15. Comercio Exterior, Países con Tratados y Acuerdos firmados con México
16. Comercio Exterior / Países con Tratados y Acuerdos firmados con México / Acuerdos Internales. / APPRIs
17. Comercio Exterior, Países con Tratados y Acuerdos firmados con México

9. Customs Law

As a result of the last amendments to the Customs Law, Mexican import controls have been eased, thereby facilitating the review of goods during customs clearance operations using non-intrusive technologies; allowing the processing of import and export operations without requiring the services of customs brokers; allowing the establishment of strategic bonded warehouses all over the Mexican territory; and eliminating unnecessary procedures, among other amendments. These have been approved in line with the principles of the Organization for Economic Cooperation and Development, for the international trade of goods.

Additionally, the Customs Law contains provisions on customs clearance (import, export and control of goods), duties and taxes payable upon importation, and non-tariff regulations and restrictions on foreign trade. It also sets forth the customs regimes for imports and exports; the requirements, rights and obligations of customs brokers; and sanctions related to foreign trade transactions. The provisions contained in the Customs Law are supplemented by the Customs Law's Regulations, the Foreign Trade General Rules issued by the Ministry of Treasury and Public Credit ("*Hacienda*"), and the Foreign Trade General Rules and Criteria issued by the Ministry of Economy.

10. Mexico's Customs National Agency

The Customs National Agency or "ANAM" has the purpose of substantially increasing the quality, efficiency and efficacy of the multiple customs and inspection services, based on the provisions setting forth the entry, transit or exit of goods into and from national territory.

The ANAM is in charge of compliance with the provisions related to the entry and exit of goods into and from national territory, as well as those related to the collection of taxes and fees applicable to foreign trade operations.

Currently the SAT continues with capabilities related to the collection of taxes and fees applicable to foreign trade operations, performing customs audits, verifications, among other activities, however the objective is that the ANAM will take over all customs and foreign trade matters, once that the applicable laws and regulations provide these functions to the ANAM and removing them from the functions originally granted to the SAT.

Additionally, during 2022, the ANAM published its new official web site containing, among other things, news and information relevant for foreign trade operations, authority's standards, manuals and guides, etc.

11. Bill of Lading Supplement (*Complemento Carta Porte*)

As of January 1, 2022, the issuance of the Bill of Lading Supplement became mandatory. Such document contains information of the merchandise, locations (origin and destination), as well as the vehicle or the different means of transport, which are incorporated into an electronic invoice of transfer type or entry with the Bill of Lading Supplement.

It is important to bear in mind that the persons obligated to issue an electronic invoice with a Bill of Lading Supplement are i) those who provide transportation services using their vehicles; ii) the owner of vehicles and merchandise that is transported in them; and iii) the intermediary or transport agent that provides logistics services for the transfer of merchandise.

The above information must be transmitted in the corresponding customs systems in accordance with the Foreign Trade General Rules for customs clearance; at all times, the carrier must carry such documentation through a printed copy or in the electronic invoice digital file.

On January 1st, 2024, penalties for not issuing the Bill of Lading Supplement properly filled came into force; failure to comply with the Bill of Lading Supplement requirements can result in fines and even in temporary shutdowns for companies involved in transportation.

The rollout of Bill of Lading Supplement Version 3.0, initially scheduled for January 1, 2024, was rescheduled to March 31, 2024. This change aims to facilitate smoother compliance considering the intricate nature of form-filling and e-platform usage.

Labor Law

1. Labor Law

The Mexican Federal Labor Law (**"FLL"**) regulates employment relationships in Mexico. The FLL is applicable to all individuals providing personal subordinated services within Mexican Territory, regardless of nationality or the place in which their employment agreement was executed. The last relevant amendment to the FLL was on January 1st, 2023, which transformed the vacation calculation significantly.

2. Mandatory employee benefits

a. Profit sharing

As of the second year of operation, an employer must distribute among its employees an amount equal to 10% of the employer's pretax profits within 60 days after the employer is required to file its year-end income tax return.

Of the profit-sharing amount, 50% must be distributed in proportion to the number of days worked by each employee during the year, and the remaining 50% distributed in proportion to the employees' wages. In accordance with the FLL, general directors, managers and administrators are not entitled to profit sharing.

Additionally, the last reform approved on 23 April 2021, established that the amount that profit sharing will have as a maximum is a limit of three months of salary of the employee or the average of the participation that the employee receives in the past three years. The amount that results most favorable for the employee will be the one taken into account.

b. Year-end bonus

All employers must pay their employees a year-end (Christmas) bonus equal to at least 15 days' wages, payable before 20 December of each year. Currently the Congress of Mexico is analyzing a bill to increase the year-end bonus to 30 days' wages.

c. Paid holidays

The FLL provides that employees are entitled to mandatory paid holidays, which must be observed by employers. An employee required to work on a mandatory paid holiday must be paid double the employee's regular wage. The mandatory paid holidays observed in Mexico are the following:

- 1 January
- First Monday of February
- Third Monday of March
- 1 May
- 16 September
- Third Monday of November
- 1 December every six years for Inauguration Day
- 25 December
- Other dates established by election law for ordinary elections

d. Vacation and vacation premium

Employees are entitled to paid vacation as follows:

Years of service	Paid vacation days
1	12
2	14
3	16
4	18
5 to 9	20
10 to 14	22
15 to 19	24

As of the fifth year, the paid vacation period will increase in by two days of vacation for every five full years of services.

In addition, employees are entitled to receive payment of a vacation premium equal to, at least, 25% of the salaries received by the employee during the vacation period.

e. Training and instruction

All employers are required by law to provide training and instruction to their employees. The employer must have a training program available at the workplace, and, if required, to be able to submit it before the Ministry of Labor. Companies with more than 50 employees are required to establish a Joint Commission for Training, Instruction and Productivity that comprises an equal number of representatives of the employees and of the employer. The main duties of the Joint Commission are to implement the training and instruction programs. The representatives can be the employees, although with the assignments of their functions must be clearly determined in the incorporation deed of the Commission.

f. Housing contributions

The FLL requires employers to pay an amount equal to 5% of the employee's wages to the National Housing Fund Institute (**"Infonavit"**). Employers must deposit these contributions in a special account at a local bank so that the Infonavit can distribute the contributions to each employee's housing account.

g. Minimum wage

The FLL establishes a minimum daily wage that must be paid to all employees in cash, without deductions or withholdings, on a weekly basis. The general minimum wage applies to all employees throughout the country, except those working in certain job categories.

It is important to consider that companies normally pay above the minimum wage limitations. Normally salaries across Mexico are established according to the market conditions and the benefits awarded by the competition, which most often exceed the minimum wage, thus it is extremely important to be aware of the work environment conditions.

h. Overtime

The maximum number of hours an employer may require an employee to work, without having to pay overtime, is 48 hours per week on the day shift, 42 hours on the night shift and 45 hours on the mixed shift. The employer must pay the first nine hours of overtime at 200% of standard pay, and overtime exceeding nine hours at 300%. An employer may not require an employee to work more than three hours of overtime per day and not more than three times per week.

Regular work hours may be distributed throughout the week as necessary, as long as it is agreed in writing; most employers now distribute them across five days (9.6 hours per day). At least one paid full day of rest per week must be observed. Sunday work is subject to a 25% premium, notwithstanding any overtime premium that may apply. If an employee works in excess of 57 hours a week, the labor authorities could impose penalties to the employer.

Currently the Congress of Mexico is analyzing a new reform on the work-shifts legal provisions, in order to reduce the current limits we have.

i. Health and safety

The employer is required to provide a safe and sanitary environment for workers to render services. Each employer must create a Health and Safety Commission to investigate the causes of illness and accidents, and to propose resources to avoid them. In addition, employers are required to comply with Federal Health & Safety Regulations, and with a number of Official Mexican Standards dealing with all types of health and safety issues such as fire and accident prevention, exposure to toxic substances, employee protective gear, etc.

j. Paid maternity leave

All employers must provide their female employees with a fully paid maternity leave of six weeks prior to the approximate delivery date and six weeks thereafter. After this 12-week period, employers must offer such employees their former positions back, including any rights accrued while on maternity such as seniority and vacation pay. Employees have the right to move up to four weeks from the pre-birth period to the post-birth period. These provisions also apply for adoption, but the maternity leave in this case is of six weeks after the date in which the mother receives the infant.

k. Paid paternity leave

All employers must provide their male employees with fully paid paternity leave of five days after the birth of a child or after an adoption is granted.

l. Employer Social Security contributions

See section “Social Security” below.

m. Additional non-mandatory benefits

Employers may voluntarily enhance the minimum benefits established by law. Benefits such as savings funds, food coupons, private medical insurance, life insurance, punctuality and attendance bonuses, cafeteria and transportation subsidies, productivity bonuses, etc. are provided by many employers in Mexico, depending on the market conditions and the financial situation of each employer. The grant of the contractual benefits usually entails fiscal and social security benefits.

3. Severance payments in case of termination without cause

The FLL establishes the principle of "job stability", which means that the employer cannot dismiss an employee unless there is a cause for termination. The FLL specifies the grounds for a justified termination without liability for the employer.

Based on the above, in the event that the employer decides to terminate the employment relationship without cause, it shall obtain the employee's consent and shall pay the mandatory severance, as follows: (i) three months of daily aggregate salary (constitutional severance); (ii) 20 days of daily aggregate salary per year of services; (iii) seniority premium (as mentioned in section "Seniority premium".); and (iv) outstanding fringe benefits upon termination.

To calculate the three months and 20 days per year of services, the employer must consider the employee's aggregate salary. The daily aggregate salary comprises the base salary and the benefits granted to the employee during the last 12 months of services, such as bonuses, incentives, commissions, premiums, allowances and any other benefit granted to the employee, either in cash or in kind, as consideration for the services rendered. Therefore, it is extremely important that employers verify that the daily aggregate salary is duly calculated whenever they terminate an employee in order to prevent claims for salary differences.

In the event the employee refuses to terminate the relationship, he or she could impose a labor claim before the Conciliation and Arbitration Labor Board (**"Labor Board"**), to request either: (a) reinstatement; or (b) the payment of the constitutional severance (three months of aggregate salary). Additionally, in case the employee prevails in its legal action, he or she would also be entitled to receive payment of back wages (calculated with the employee's daily aggregate salary) generated from the dismissal date until the payment date. Back wages are limited to a maximum period of 12 months; once this period concludes, an interest shall be paid at a 2% monthly rate, applied to 15 months of wages, capitalized upon payment.

4. Payments derived from dismissal with cause

If the employer terminates the employment relationship for cause, the employee is only entitled to receive the payment of: (i) the seniority premium (as mentioned in section "Seniority premium"); and (ii) outstanding fringe benefits upon termination.

To dismiss an employee for cause, an employer must (i) be able to prove, in labor court if necessary and with irrefutable evidence, that the dismissal was for a statutorily defined "just cause" in the FLL; and (ii) give the employee, directly or through the Labor Board, prompt written notice of the dismissal, specifying the grounds for dismissal.

The FLL lists the specific causes for which an employer may dismiss an employee without being liable for severance pay. These causes include, for example, immoral conduct, discrimination, bullying, sexual harassment, absenteeism (more than three absences in a period of 30 days), unauthorized disclosure of trade secrets, unreasonable refusal to follow health and safety procedures, insubordination, and conduct lacking integrity and detrimental to the employer, its clients or providers, among others.

Employees, who are dismissed for cause, have the right to file a labor claim before the Labor Board, arguing an unfair dismissal, and to request either: (a) reinstatement: or (b) the payment of the constitutional severance (three months of aggregate salary). Moreover, if the employee prevails in his or her legal action, he or she would also be entitled to back wages.

Note that for specific positions and under certain circumstances (for example "trust employees"[18]), the FLL establishes that the employer could refuse to reinstate the employee, and instead, pay to the employee 20 days of aggregate salary per year of services, including the proportional part of the mentioned.

Based on the above, before terminating an employee for cause, the employer should analyze: (i) if there is a cause for termination provided by FLL; (ii) if the employer has conclusive evidence to prove the grounds for termination; and (iii) if the employer is within the statute of limitations of 30 days to dismiss an employee for cause.

5. Constructive dismissal by the employee

An employee could terminate the employment relationship and receive the severance pay (referred in section "Severance payment in case of termination without cause" above), if the employer commits specified acts listed in the FLL. These acts include modification of labor benefits (e.g., reduction of salary or benefits), effects on the employee's dignity, discrimination, bullying and sexual harassment, and allowing unsafe working conditions, among others.

6. Termination of the individual employment relationship

The FLL provides that a labor relationship may be terminated without either party being liable under certain circumstances, including: (i) mutual agreement of the parties; (ii) death of the employee; (iii) the conclusion of a specific job; and (iv) the physical or mental incapacity or disability of the employee that prevents him or her to provide services.

In the event of termination without liability for any of the parties, the employee is only entitled to receive the payment of outstanding fringe benefits upon termination.

Likewise, if the termination derives from the employee's physical or mental incapacity or disability, the employer shall also pay the seniority premium (as mentioned in section "Seniority premium") and one month of salary.

7. Seniority premium

The seniority premium referred in sections "Severance payment in case of termination without cause", "Payments derived from dismissal with cause" and "Termination of the individual employment relationship" above, is equal to 12 days of salary per each year of services rendered. If the employee salary is higher than two times the minimum wage in effect, the salary that shall be considered to calculate this concept will be capped to two minimum wages. The seniority premium must be paid to all employees who: (i) voluntarily resign to the employment relationship after completing 15 years of employment; (ii) terminates the employment relationship with liability for the employer; (iii) are dismissed by the employer with or without "just cause"; (iv) die while still employed, in which case their beneficiaries receive the seniority premium; and (v) acquire a physical or mental incapacity or disability that does not derive from a work accident.

In addition, and according to the current FLL provisions, employers have to consider the culture, needs and way of thinking, among other factors, that characterize the workforce in a particular place before establishing a business. Likewise, it is advisable to keep in mind that interpretation of the FLL provisions depends on the labor authorities' and Federal Courts' criteria.

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18. The FLL defines functions of "trust" as those of direction, inspection, surveillance and supervision generally and those that involve personal matters of the owner(s) of the company. The determination of whether an employee is an employee in a position of trust depends not on title but on actual work functions.

8. Collective Bargaining

In accordance with the 2019 reform related to labor justice and freedom of union association, the process of union selection and freedom of association were greatly strengthened.

Likewise, with the implementation of the aforementioned reform in its entirety, the Labor Boards will disappear to make way for both the new Labor Tribunals, which are dependent upon the Judicial Power, and the Federal Center for Conciliation and Labor Registry, which is an organism in charge of supervising and guiding transcendental functions such as (i) the conciliation for both individual and collective labor disputes: (ii) the issuance of the certificate of representation, a transcendental document to achieve the signing of a collective contract by a union: and (iii) registration of all collective labor agreements and internal labor regulations.

This last relevant change related to collective bargaining, the fulfillment of which is in charge of the Center, is of particular importance because the Center is in charge of conducting conciliatory and registry functions; regarding the registry part, the Center (i) verifies union democracy processes: (ii) issues the "Certificate of Representation" for the conclusion of an initial collective contract and prior to a strike: and (iii) it is in charge of the revision, approval and deposit of the internal work regulations. Regarding the conciliatory function, it is a decentralized public organism competent to substantiate the conciliation procedure that workers and employers must exhaust before proceeding to the Labor Courts.

9. Outsourcing regime

The FLL establishes a legal framework for outsourcing, which was recently reformed to prohibit the subcontracting of personnel services, which in turn is understood to be updated when the contracting party provides or makes personnel available to the beneficiary of the services.

Intermediary agencies that participate in the recruitment and selection process of personnel are not considered employers for the effects of the above paragraph. Likewise, the FLL allows the use of shared (back office) services companies.

Outsourcing services or execution of specialized works is allowed as long as they are not part of the corporate purpose or the main economic activity of the service recipient (beneficiary); furthermore, the outsourcing entity must have a registry issued by the Ministry of Labor, called REPSE, Spanish acronym for Registry of Providers of Specialized Services or Works or in Spanish R*egistro de Prestadoras de Servicios Especializados u Obras Especializadas*.

The purpose of the outsourcing of services or execution of specialized works must be included in detail within the services contract executed between the parties, as well as the approximate number of employees that will be made available as a result of the rendering of the required services. Additionally, the joint liability concept is now formally incorporated with the FLL aiming to properly enforce all employment obligations between the parties.

10. Hiring Modalities

Additionally, to the work contracts for an indefinite period, which is the regular norm in Mexico, for determined time and determined work, there are three additional hiring modalities: (i) trial period: (ii) training contract; and (iii) seasonal work.

a. Trial period

A trial period allows an employer to evaluate whether an employee meets the requirements and has the necessary knowledge to carry out specific job duties.

This trial period must be negotiated in the employment contract and cannot be for more than 30 days (with an extension to 180 days in specific cases, for example in the case of high level directives or technical spots). If the employee does not meet the job requirements at the completion of the trial period, the employer, at its sole discretion, and considering the opinion of the Joint Commission of Productivity, Training and Education, is entitled to terminate the employment relationship without liability (i.e., severance).

b. Training contract

The purpose of the training contract is to allow the employee to acquire the necessary knowledge and skills for the job.

A training contract may last three months at most (with an extension to six months in specific cases, the same as the previously mentioned case). If the employee does not acquire the knowledge and skills necessary for the job at the completion of the training period, the employer, at its sole discretion, and considering the opinion of the Joint Commission of Productivity, Training and Education, is entitled to terminate the employment relationship without liability (i.e., severance).

c. Seasonal work

This is a new hiring modality within the contracts for an indefinite period.

In this modality, the employment relationship is for an indefinite term, but for discontinued activities. In other words, this agreement is for seasonal activities or for activities that are not required to be performance the whole week, month or year. The effects of the employment relationship are suspended during the no-seasonal period, meaning that the employee's obligations of providing services and the employer's obligation of paying wages are suspended. These and other obligations re- establish at the next seasonal period.

11. Social security

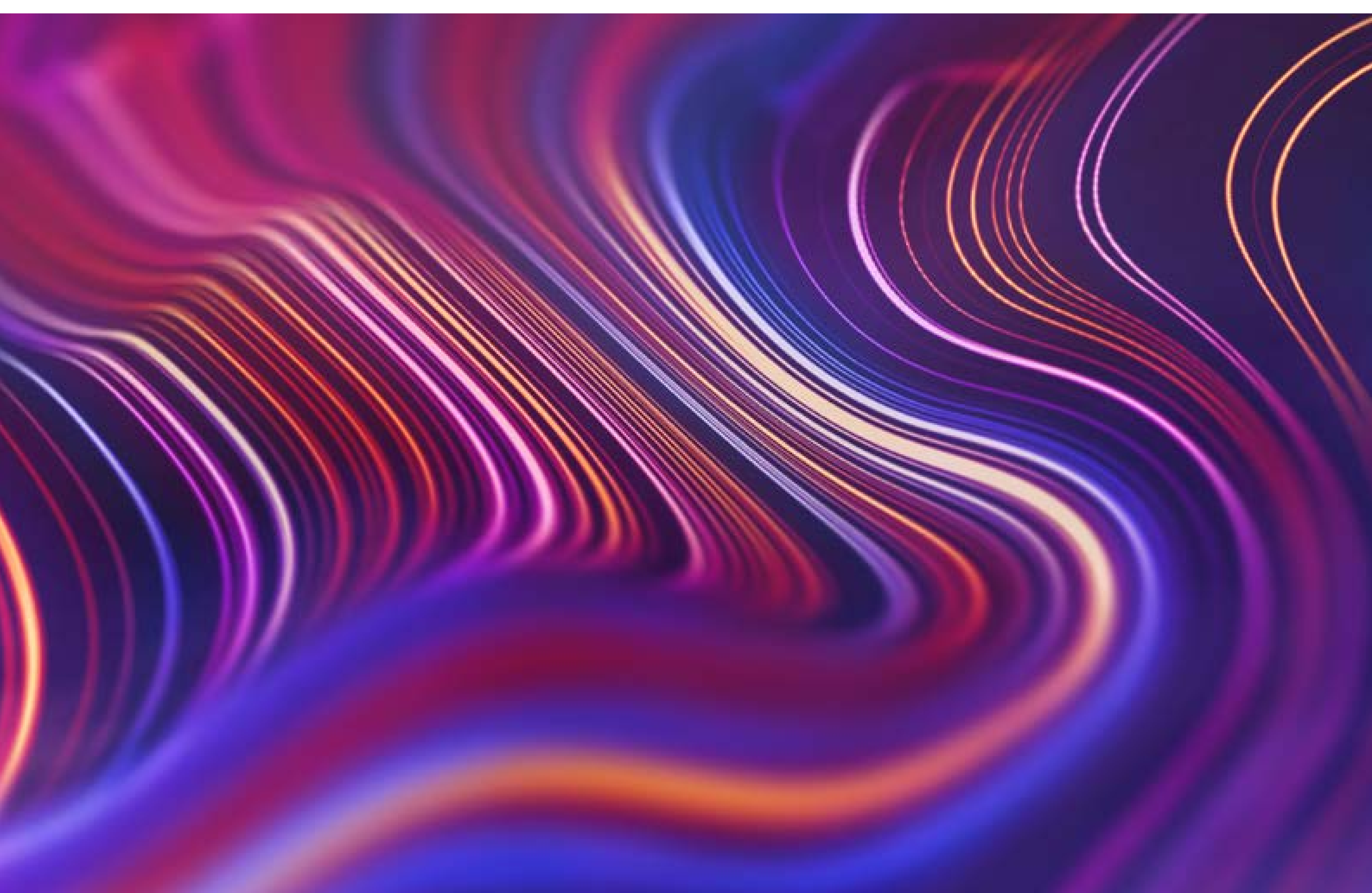
The Social Security Law enacted on 31 January 1942 has undergone a series of amendments throughout the years, the last of which occurred on 9 July 2009. Under the SSL, the creation of an employment relationship automatically entitles the employee to various social security benefits, which are funded by contributions paid by both the employer and the employee, depending on the risk factor of the company. An employer must register its employees in the Mandatory Regime of Social Security before the Mexican Social Security Institute (**"IMSS"**). By doing so, the employee is covered by the different branches of insurance and is entitled to receive the benefits in cash and in kind offered by such branches of insurances: (i) work-related risks; (ii) health and maternity insurance; (iii) disability pension and life insurance; (iv) retirement and old age pension; and (v) child care and social benefits.

The IMSS assumes all responsibility for providing the benefits, and the employer is released from any liability for work-related accidents or illnesses unless it has not complied with its registration and payment obligations. Even if the employer has not complied with its registration and payment obligations, the IMSS still will provide the benefits to the employee, but the IMSS will seek reimbursement of the cost from the employer and will impose penalties. Social Security benefits are provided at IMSS facilities located throughout Mexico.

The basis for the Social Security contributions is the integrated wage, which includes all monetary and in-kind compensation and benefits received by the employee, excluding only the following:

- Work tools.
- Savings funds, as long as they include matching contributions by the employer and the employee, and the employee does not cash more than twice per year.
- Contributions paid by the employers for social or union purposes.
- Additional contributions made by the employer to the retirement insurance, old age insurance.
- Contributions made by the employer to the Infonavit.
- Profit sharing paid to the employees.
- Food and shelter provided the employee pays at least 20% of the Measurement and Recalculation Unit ("UMA").
- Food baskets, as long as they do not exceed 40% of the UMA.
- Attendance and punctuality bonuses.
- Overtime pays, unless it exceeds the overtime allowed by the FLL.

Any employer who fails to properly withhold and pay the corresponding social security contributions, who submits false information to the IMSS or who otherwise fails to fulfill its obligations under the SSL may be subject to a range of penalties.



Environmental

1. Compliance

Mexico has enacted many laws, regulations and standards in the area of environmental protection and particularly dealing with diverse issues such as environmental impact and risk, flora and fauna protection, prevention and control of air, water and soil pollution, environmental liability, soil remediation and hazardous substance handling and disposal.

The General Ecological Balance and Environmental Protection Law (the "Environmental Protection Law") enacted in 1988, is the primary Mexican environmental statute. It contains specific chapters dealing with the most important topics of environmental law. It also sets out enforcement procedures and other provisions concerning the respective responsibilities of the federal, state and municipal governments. The General Waste Prevention and Integral Management Law (the "Waste Law") enacted in 2004, establishes guidelines for preventing soil pollution and waste handling, disposal and management plans. In 2012 Mexico enacted a General Climate Change Law (the "Climate Change Law") and in 2014 a Law that establishes the legal attributions of the National Industrial Safety and Environmental Protection Agency for the Hydrocarbons Sector (the "ASEA Law").

All 32 Mexican states have promulgated environmental laws and all activities conducted in Mexico must comply with federal, state and municipal laws.

2. Environmental authorities

The Ministry of Environment and National Resources ("SEMARNAT") is the federal authority entrusted with setting and overseeing national policy for environmental protection. In addition, it is responsible for enacting Mexican Official Standards ("NOMs") that establish: (i) pollutant limits for air emissions and wastewater discharges; and (ii) criteria for classifying waste as hazardous. A technically autonomous agency within SEMARNAT, the Federal Bureau of Environmental Protection ("PROFEPA"), is in charge of carrying out enforcement activities. The National Water Commission ("CONAGUA") is the agency in charge of overseeing all aspects of water management in Mexico.

With the energy reform approved in 2014, a new environmental authority was created. This authority is the National Industrial Safety and Environmental Protection Agency for the Hydrocarbons Sector ("ASEA"). This agency has the authority to regulate all activities of the sector, including but not limited to the exploration and exploitation of oil and gas, as well as activities related to petrochemicals and the transportation and distribution of hydrocarbons.

ASEA has a dual function because it is a regulatory agency that issues environmental authorizations and licenses (such as for environmental impact, air emissions, hazardous waste handling) and is also an enforcement agency that may impose penalties including fines, shutdowns and remediation orders.

3. Environmental impact permitting

Prior to initiating operations, industrial facilities must secure an environmental impact authorization ("EIA"). If the activity to be carried out is federally regulated pursuant to the Environmental Protection Law, the EIA must be issued by SEMARNAT or ASEA in the case of the hydrocarbon sector.

Federally regulated activities include oil, petrochemical, steel, paper, sugar, mining, cement and electricity generation industries, as well as hazardous waste treatment, confinement and disposal activities.

If the activity to be carried out is not federally regulated, the EIA must be secured from the corresponding State or Municipal Environmental Authority ("Local Environmental Authority") in accordance with the applicable municipal or state law.

4. Prevention and control of air pollution

Industrial facilities that emit gases, fumes or solid particles into the atmosphere, are required to secure an Operating License if the stationary source is under state jurisdiction or a Consolidated Environmental License if the source is subject to federal jurisdiction (such as oil and gas facilities, the automotive industry, the chemical industry and cement and lime industries). In addition, stationary sources are required to comply with Mexican Official Standards in the area of air quality as well as with specific air emission reporting and monitoring requirements.

5. Water

The National Water Law ("Water Law"), enacted in 1992 requires that a concession be secured by the CONAGUA in order to draw groundwater for industrial, commercial or service activities. Concession holders are required to pay applicable fees based on the volume of water they consume.

Parties that discharge wastewater must secure a wastewater discharge permit from CONAGUA if the wastewater is discharged into a federal water body or into the soil. If wastewater is discharged into a municipal or urban sewage system, a discharge permit or registration must be secured from the corresponding State or Municipal water authority.

In addition, wastewater must comply with the water quality limits established by applicable Mexican Official Standards.

6. Hazardous waste management

According to the Waste Law, a hazardous waste is defined as "any waste in any physical form which is either corrosive, reactive, explosive, toxic to the environment, flammable or biologically infectious, and which represents a hazard to the ecological balance of the environment."

Hazardous waste generators must comply with a number of reporting, handling, transportation and disposal requirements. They must register themselves before SEMARNAT or ASEA and must ensure that all of their hazardous waste is collected, transported and disposed of by licensed hazardous waste disposal companies, in order to avoid liability resulting from improper handling.

If hazardous waste is generated as a result of processing raw materials and components imported temporarily into Mexico under a specific importation regime, such hazardous waste must be exported to its country of origin. Waste that is recyclable may remain in Mexico.

7. Soil pollution

According to the Waste Law, owners or occupiers of land that is contaminated with hazardous waste are jointly liable for its remediation regardless of fault. In addition, parties that cause soil or groundwater contamination may face administrative, civil and, in some cases, criminal liability.

To remediate a contaminated site, monitoring, sampling and remediation protocols established by the Waste Law, its Regulations and applicable Mexican Official Standards must be followed.

8. Community right to know

As a result of the amendments to the Environmental Protection Law, SEMARNAT created a public pollutants registry composed of data furnished by individuals and entities that (i) emit pollutants into the air, soil or water; and (ii) handle hazardous substances. This means that all information, subject to federal jurisdiction, regarding a facility's air emissions, wastewater discharges and waste stream is made public. SEMARNAT is currently negotiating collaboration agreements with many states and municipalities in order to increase the information to be included in such registry. This is consistent with a chapter of the Environmental Protection Law that allows any person the right to receive environmental information from SEMARNAT as well as from State or Municipal authorities.

The Regulations to the Environmental Protection Law in the Area of Emission and Pollutant Transference Registry were published on 3 June 2004. These regulations established a National Registry of all pollutants generated in Mexico.

9. Protection of collective rights: legal standing and class actions

As of August 30, 2011, the Mexican government published amendments to several federal laws, in order to allow collective actions.

These actions, which are similar to "class actions" in the United States, will allow a group of persons to go to Federal Civil Courts to protect diffuse or collective rights, such as those of an indivisible nature, or individual rights or interests having a collective incidence and that deal with any of the following areas:

- Consumption of goods and services, whether public or private.
- Environmental protection.

a. Who has a right to file a collective action

According to the Federal Civil Procedure Code, the following individuals and entities will have legal standing to file a collective action:

1. (i) SEMARNAT, PROFEPA or ASEA; (ii) Federal Bureau of Consumer Protection; (iii) National Commission for the Protection and Defense of Users of Financial Services; and (iv) the Federal Competition Commission.
2. A common representative of a community composed of at least 30 members.
3. Civil non-profit associations (such as non-governmental organizations) legally incorporated at least one year prior to filing the collective action, whose corporate purpose includes the promotion or defense of rights and interests in any of the areas detailed above, and that comply with the requirements established in the Federal Civil Procedure Code.
4. The Attorney General of the Republic.

b. Statute of limitations

The statute of limitations for filing collective actions is twelve years from the moment when harm or injury was caused. However, in the case of harm or injury having continuous or ongoing effects, the term will run as of the last day (or more recent day) in which the harm has been caused (in the case of acts or omissions that cause environmental harm, many of these are of a continuous nature).

c. Types of collective actions

Diffuse action:	Action of an indivisible nature, exercised to uphold diffuse rights or interests, held by an unspecified group, for the purpose of seeking judicially that harm caused to such group be repaired, by restoring things to where they stood prior to the harm having been caused, or by a substitute reparation, taking into account the harm caused to the rights and interests of the group, without there needing to be a legal link among the members of the group and the defendant.
Individual (homogeneous action):	Indivisible action exercised to uphold collective rights and interests, held by a specific or unspecified group, on the basis of common circumstances, in order to judicially seek that a defendant repair a harm or injury caused, by carrying out or abstaining from carrying out one or more actions, and also by paying damages individually to each member of a group and which derives from a common legal link that exists by a mandate of law between the group and the defendant.
Individual (homogeneous action):	Divisible action exercised to uphold individual rights or interests having a collective incidence, held by individuals grouped by common circumstances, for the purpose of claiming from a third party the mandatory compliance or termination of an agreement with its consequences and effects, in accordance with applicable law.

d. Legitimate causes to bring a collective action

The following are legitimate causes to bring a collective action before a Federal Civil Court:

- Against actions or omissions that harm (i) consumers or users of goods and services, whether public or private; (ii) the environment or; (iii) acts that have harmed a consumer due to the existence of improper concentrations or practices that constitute a monopoly, declared as such by a final resolution from the Federal Competition Commission.
- When there are common factual or legal issues among members of the group in question.
- When there are at least 30 members of a community in the case of collective actions in a strict sense.
- When there is coincidence between the purpose of the action and the harm or injury suffered.
- If the matter being litigated has not been tried and decided (res judicata) in prior proceedings resulting from the exercise of collective actions.
- If the statute of limitations has not lapsed.

e. Settlement arrangements

A federal judge hearing a collective action will have the authority to call a hearing for the parties to settle the case. In that hearing, the judge may propose solutions to the conflict and may call on the parties to try and resolve their differences. The matter may be settled through a judicial agreement at any time during the trial.

f. Precautionary measures (injunctive relief)

At any time during the procedure and at the request of any of the parties, a federal judge may impose any of the following precautionary measures:

- An order to cease and suspend the acts or activities that are causing or will cause imminent irreparable harm to the group.
- An order to carry out acts or actions to prevent imminent irreparable harm to the group.
- The removal from the market or the seizure of instruments, goods, samples and products related to the irreparable harm having been caused, that is being caused or that will likely be caused to the group.
- Any other pertinent measure to protect the group.

g. Rulings

If there is no settlement and the trial goes forward, a federal judge may issue any of the following rulings once the procedural and evidentiary phase has concluded:

- In diffuse actions, a judge may only condemn a defendant to repair the harm caused to the group, consisting of restoration to the state existing prior to the harm having been caused, if at all possible. If this is not possible, a judge may impose substitute compliance (monetary compensation), taking into account the rights and interests of the group.
- In collective actions, in a strict sense as well as in homogeneous actions, a judge may order that the defendant repair the harm by carrying out one or more actions or by requiring that each individual be compensated.

10. Environmental Liability

As of June 7, 2013, the Environmental Liability Law was published in Mexico's Official Federal Gazette. The ELL entered into force on 6 July 2013.

a. Implications of the ELL

With this new law, any person from an affected community, an environmental non- governmental organization, PROFEPA or a state environmental agency, may bring a civil action before federal courts against a party that causes environmental harm in order to seek repair or compensation.

The ELL regulates the environmental liability borne out of harm caused to the environment, as well as its repair and compensation. This law also contemplates alternative mechanisms for the solution of controversies, administrative procedures and procedures that may correspond in the case of environmental crimes.

b. Subjective and objective liability

The ELL states that, as a general rule, environmental liability will be subjective except in the following cases:

- Any action or omission involving the handling, use, transportation or disposal of hazardous waste.
- The use or operation of ships in coral reefs.
- Carrying out high-risk activities (defined as those that imply the generation or handling of substances having corrosive, reactive, radioactive, explosive, toxic, flammable or bio-infectious characteristics in accordance with the Environmental Protection Law).

In other cases specified by the Federal Civil Code, the ELL states that no environmental harm will be deemed caused if losses or damages are not adverse in the following cases:

1. They were expressly manifested by the responsible party and explicitly identified in their scope, as well as evaluated, mitigated and compensated through specific conditions, in addition to being previously authorized by the Ministry of Environment and Natural Resources (SEMARNAT) either as part of an environmental impact, land-use change procedure or any other permitting process.
2. They do not surpass the limits established by environmental laws and applicable Mexican standards.

If requirements or conditions established by SEMARNAT were not met or complied with, the existence of environmental harm may be established through the corresponding procedure.

c. Economic penalties

The ELL states that a judge may impose any of the following economic penalties as a result of harm being caused to the environment:

1. 300 to 50,000 times the minimum wage in Mexico City if the party responsible is an individual.
2. 1,000 to 600,000 times the minimum wage in Mexico City if the party responsible is an entity.

According to the ELL, fines imposed on a legal entity (such as a corporation) may be reduced up to a third of the total amount if at least three of the following circumstances may be demonstrated:

- If the entity has not been previously sentenced in the terms of the ELL and/or is not a repeat offender;
- If none of its employees, representatives or directors have been sentenced for crimes against the environment;
- If during a term of at least three years prior to the conduct that caused environmental harm the entity has had an internal organism in charge of permanently verifying compliance with environmental laws and licensing requirements;
- If there is a financial guarantee in place (such as a bond or insurance) to cover against environmental harm;
- If it holds one of the audit certificates established by the General Law of Ecological Balance and Environmental Protection (such as a “clean industry certificate” issued once an environmental audit has been successfully carried out);

A judge may order whoever is found liable for causing environmental harm to repair such harm, and if this is not possible, to implement compensatory measures either partially or totally, as well as implement the necessary actions to prevent environmental harm from increasing.

d. Statute of limitations

As stated above, the statute of limitations for bringing an action for environmental harm is 12 years as of the moment when the harm has been produced.

e. Legal standing

The following individuals and entities have legal standing to file an action for environmental harm:

1. Individuals that inhabit a community adjacent to the location where the harm has been caused;
2. Private non-profit Mexican entities incorporated for the purpose of protecting the environment, when acting on behalf of an inhabitant of a community adjacent to the location where the harm has been caused;
3. The federal government through PROFEPA and
4. State environmental protection bureaus and agencies.

f. Liability for environmental harm

The Liability Law states that legal entities are liable for environmental damage caused by their legal representatives, directors, administrators, managers, directors, employees and by any party having functional control over their operations, including if such persons are either careless or acting in accordance with their functions.

Officers, employees and agents are generally liable for:

- Negligence or misconduct when discharging their duties;
- Breaches of instructions received from management;
- Actions that exceed their authority and
- Allowing, within the scope of their functions, violations to the Federal Criminal Code, solely in the case of officers, legal representatives, managers or employees.

g. Shareholder or parent company liability

In Mexico, there is no piercing of the corporate veil for environmental liability matters; therefore, shareholders may not be liable. Only the legal entity (a company) may be found liable along with its legal representatives, directors, administrators, managers or employees. However, environmental agencies may summon shareholders of a particular company to the administrative procedure or judicial trial in order to negotiate an agreement on behalf of a company found to be causing environmental harm.

It is rare for parent companies to be accused of playing a role in environmental harm caused by their subsidiaries. However, collective actions on environmental matters could target parent companies if there is evidence that they may have been complicit in any action or omission that causes environmental harm.

11. Climate Change and Emissions Trading

Mexico's Climate Change Law states that it is in country's strategic interest to carry out actions designed to mitigate or compensate for climate change and to develop the corresponding technical, as well as economic, instruments. Also, as a signatory to the Paris Climate Agreement, Mexico has agreed to contribute to fighting climate change and reducing greenhouse gas ("GHG") emissions within the country and to implement mitigation and compensation policies.

The Climate Change Law sets an aspirational 30% greenhouse gas reduction target by 2020, increasing to 50% by 2050 with regard to the year 2000 emissions. However, this target has not been achieved and the current government does not seem to be inclined to adopt actions to meet GHG reduction targets. According to the Climate Change Law, GHG reduction targets may be achieved if an international regime is in place that provides for financial and technological support afforded by developed countries. Currently, the government has a target for 35% of the nation's energy output to come from renewable or "clean" sources by the year 2024.

The Mexican government requires that emitters of a minimum of 50,000 MT of GHGs a year report their emissions. This is widely seen as a prelude to a future emissions trading scheme.

There are currently no laws establishing a mandatory emissions trading scheme in Mexico. However, in August 2016, the Mexican Stock Exchange and SEMARNAT unveiled a pilot program to develop a carbon market in Mexico so that the private sector may reduce its GHG emissions and remain competitive in a global environment. However, this pilot program has not yet started and so at this time is only a virtual exercise among the parties involved. There is, however, a voluntary market of emissions enacted which is administered by México, a company created by the Mexican stock market. This company also has a market specific for the renewable energy sector.

It is worth mentioning that according to Mexico's REDD+ 2017-2030 Strategy published by the federal government, as well as a Bill of Law that intends to amend the Forestry Law (currently being discussed in Congress), rights over carbon credits should be bestowed exclusively on the government and not on the owners of the land where the credits are generated. This has created some controversy within indigenous communities and farming towns. It is likely that this claim by the government will be challenged in courts.

Several States in Mexico have introduced carbon taxes. These taxes are levied on direct GHG emissions generated by stationary sources, calculated on the basis of annual metric tons of Carbon Dioxide Equivalent (CO2e). The tax rates vary on the basis of the type of pollutant being discharged. For example in the case of methane gas, the fixed tax rate has to be multiplied by 26, because methane is 26 times more powerful than CO2 to cause climate change. Among the states that have introduced emission taxes are Mexico State, San Luis Potosí, Tamaulipas, Yucatán and Zacatecas. It is worth noting that a party that reaches net zero emissions, may become exempt from paying the tax.

Intellectual property

1. Intellectual property

Mexico is part of the approved system of Intellectual and Industrial Property, as it has signed the most relevant treaties on the matter, such as the Paris Convention for the Protection of Industrial Property; the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization ("TRIPS"); the Madrid Protocol; as well as the conclusion of the Treaty between Mexico, the United States and Canada ("T-MEC").

In 2020, Mexico updated its legislation on Industrial Property, thus issuing the Federal Law for the Protection of Industrial Property ("LFPPI") to replace the 30 year old Industrial Property Law. Similarly, Mexican Federal Congress amended the Federal Copyright Law ("LFDA").

Following international standards, the Mexican Intellectual Property system is divided into two categories, that is, industrial property and copyright. The first is regulated by the LFPPI regulating patents, industrial designs, utility models, industrial secrets, trademarks, commercial notices (slogans), designations of origin, as well as protection and unfair competition when it is related to Industrial Property rights. Copyright is regulated by theLFDA. In the following paragraphs we will provide current relevant topics regarding these areas of the law.

2. Industrial Property

a. Protection of registered trademarks

i. Trademark registration.

The protection of registered trademarks and the exclusive use of a distinctive sign in Mexico is obtained through its registration with the Mexican Institute of Industrial Property ("IMPI"). The use of a mark does not need to be verified to obtain its registration.

Therefore, it is advisable to submit trademark registration applications as soon as possible to ensure correct protection before entering the market, especially for foreign companies seeking to start commercial operations in Mexico.

Trademarks are classified according to the International Classification of Goods and Services for the registration of trademarks under the Nice Agreement. In Mexico it is not possible to obtain multi-class registrations and each application's prosecution will follow independently.

The estimated timeframe to obtain a trademark registration is four to six months. During the application's prosecution, there is a possibility that the IMPI issues a preliminary rejection if it considers that the trademark proposed for registration falls within one of the grounds for prohibition of registration established in the law, for example, if it lacks distinctiveness per se, if it is similar to a senior trademark, or if it is descriptive. Additionally, should a third party oppose the application, IMPI will notify the opposition and the preliminary rejection both in the same Office Action. The term to answer this objection is four months, two of normal term and two more of automatic extension, as long as applicant pays government fees for the automatic extension and response to the official action.

Once the registration has been granted, the trademark must be used along with the legend "Registered Trademark", the abbreviation "MR" or the "®" symbol.

Currently it is no longer necessary to register trademark license agreements; however, it is still recommended when the trademark is being used by a licensee or an authorized user. Similarly, it is recommended to facilitate the structuring of royalty payments.

Any transfer or assignment of registered trademark rights must be registered with the IMPI for it to take effect against third parties.

ii. Madrid Protocol

Mexico is part of the Madrid Protocol, allowing international trademark registrations to be filed through this system.

The Madrid Protocol provides a mechanism by which the owner of a registered trademark, who has an application or registration of an existing registered trademark in a member jurisdiction, can obtain an international registration by submitting a single application, directly at its local Intellectual Property Office.

A noteworthy disadvantage of the Madrid Protocol's implementation is that it results in significant prosecution delays, as well as a higher likelihood of facing formal objections. In practice, we've seen delays up to 24 months and said delay on several occasions has caused other types of conflicts, for example, applications filed and granted locally notwithstanding the prior existence of an application filed thought Madrid Protocol.

iii. Opposition procedure

Mexico first adopted the opposition procedure in 2016, amending its procedural approach in 2020, to become more adversarial, closer to litigation. Once the trademark application is submitted, the Mexican IP Institute (IMPI, for its Spanish acronym) publishes the same in the Industrial Property Gazette for opposition purposes, approximately 10 days after application's filing date.

As of the publication, any third party that has a legal interest can oppose the trademark application, within a one-month term after its publication. It is not possible to request an extension of the term to oppose.

For the purposes of monitoring the requests submitted by third parties, and to be able to assert the right to object, it is highly recommended to have a trademark surveillance service.

The opposition to the registration or publication requested does not prejudge the outcome of the substantive examination of the application by the Trademark Office; however, the authority must issue a resolution on the opposition proceeding, which can be appealed.

It is important to take into consideration that if a trademark is granted after an opposition proceeding, it will not be legally possible to file an invalidation action against said registration, under the same grounds and evidence filed in the opposition proceeding.

iv. Declaration of Use

Trademark titleholders must declare the actual and effective use of its trademark for the goods and services that it was granted protection. The Declaration of Use must be filed within the next 3 months after the 3 years from the granting of the registration.

If this declaration is not filed, the registration will automatically expire. If the use is not declared in all the protected products or services, it will be understood as a limitation of the protection. If the trademark has not been used within the next 3 years after its registration, but the titleholder is interested on maintaining its trademark, the best practice is filing a new application, allowing the senior registration to lapse, although other strategies may be implemented on a case by case basis.

It is important to take into consideration that trademarks registered in Mexico, filed under Madrid Protocol are also subject to the mandatory Declaration of Use; for such reason, it is recommended to appoint a Mexican counsel to monitor and take over legal representation for International Registrations extended to Mexico.

v. Renewal

A trademark registration in Mexico is valid for 10 years, which can be renewed for the same amount of time, every 10 years. For trademark registrations granted before 5 November 2020, the 10 years are counted from the filing date. For registrations granted after said date, the 10 years will be counted from the date of granting the registration of the trademark.

Trademark registrations can be renewed, six months before or six months after the expiration date, as a grace period.

When filing the renewal application, the titleholder must declare the real and effective use of the mark, indicating the specific products or services to which it is applied, accompanied by the payment of the corresponding fee. It is not necessary to file actual evidence of use. The scope of protection of the registration will continue only for those goods or services for which use has been declared.

vi. Geographical Indications and Appellations of Origin

The Law in Mexico grants protection and recognition of appellations of origin and geographical indications. The most common appellation of origins in Mexico are Tequila and Mezcal, which follow its special regulations in accordance with Mexican Standards and are observed by Regulatory Councils for the protection of the quality of the products.

vii. Non-traditional trademarks

LFPPI foresees the right to apply for registration of non-traditional trademarks, such as holograms, sounds, smells, and commercial image (commonly known as trade dress). The latter may include the product's packaging, the establishment's look-and-feel, the position of a mark on a product, and other disruptive elements that, when combined, distinguish products or services in the market. There are also collective marks and certification marks, commercial notices ("slogans") and commercial names.

viii. Famous and well-known brands

A trademark is considered to be well known in Mexico when a certain sector of the public or of the commercial circles of the country knows the trademark as a consequence of the domestic commercial activities carried or abroad by a person who uses that trademark in connection with its products or services, or as a consequence of the promotion or advertising of the trademark.

On the other hand, a trademark is famous in Mexico when it is known by the majority of the consumer public, or when it has a diffusion or recognition in global commerce.

In practice, obtaining a declaration of a Famous or Well-known trademark provides with stronger position and arguments for oppositions, invalidation and cancellation actions, as well as general brand enforcement actions. We've seen that IMPI grants famous or well-known trademarks with an additional protection layer useful to deter against unfair competition practices, bad faith applications, as well as in trademark infringement cases.

ix. Nullity and Cancellation of trademark registrations.

LFPPI foresees three general grounds to challenge a trademark registration, namely, invalidation actions, cancellation actions based on non-use, and cancellation due to loss of distinctiveness due to genericness.

The invalidation actions can be based in the following grounds: (i) when a trademark is granted against the Law; (ii) when there is previous use in Mexico or abroad of the same or a confusingly similar mark; (iii) when the titleholder does not prove the date of first use mentioned in the application (defendant has the burden of proof); (iv) when it has been granted by error or difference of appreciation by the trademark office due to the prior existence of a confusingly similar trademark; (v) when it has been registered by an agent or distributor of a trademark without proper authorization; (vi) and, when it has been obtained in bad faith.

The term to enforce these actions is five years, except for registrations granted against the Law, those registered by the agent or distributor, or those obtained in bad faith, which can be enforced at any time.

The cancellation action based on non-use proceed against those registrations that have not been used within the last 3 years from the filing date of the cancellation action. The titleholder will have the burden to prove actual use of the trademark for the goods and services protected.

Finally, the cancellation action based on loss of distinctiveness due to genericness claim can be initiated against any trademark registration that has lost its distinctiveness and can be initiated by any person who demonstrates a legal interest. To avoid falling into this as a titleholder, it is necessary to initiate actions to avoid the loss of the distinctive character of the trademark; however, this standard has yet to be developed under Mexican Case Law.

It is possible to claim partial invalidation action or partial cancellation actions based on non-use.

All these procedures are considered a formal litigation. IMPI has jurisdiction over these matters, as well as on infringement actions. IMPI's decision can be appealed on two occasions before the Federal Courts.

x. Infringement actions.

Domestic IP enforcement is through infringement actions prosecuted before IMPI, rather than civil actions, as IMPI has exclusive jurisdiction on infringement matters. These actions are bench trials, in which plaintiff has the burden of proof to demonstrate that reasonable facts and evidence have been brought before IMPI. Similar to a cancellation or invalidation action, IMPI's decision can be appealed twice before the Federal Courts.

The LFPPI sets forth 33 different grounds to initiate an infringement action for the violation of an Industrial Property right. These grounds include remedies for unfair competition, unauthorized usage of trademarks, patents, designs, trade dress, disclosure of industrial secrets, among others.

During these infringement procedures there is the possibility of requesting injunctive relief to stop the infringement in progress.

The sanctions in these procedures are monetary, with a current ceiling of approximately MXN 25 million, which are around USD 1.3 Million.

Once a favorable resolution is obtained either in the infringement procedure, there is the possibility of starting a new procedure to collect damages, which can be before IMPI or a Civil Judge. Plaintiff has the right to choose jurisdiction at this stage, contrary to the infringement procedure.

LFPPI sets theminimum damages threshold, starting at not less than 40% of the legitimate value of the offending product or service.

Additionally, the LFPPI foresees the titleholder's right to start criminal complaints resulting from counterfeiting, trade secret misappropriation or unauthorized disclosure, as well as illicit acts against appelations of origin.

b. Trade Secrets

Generally speaking, trade secrets are protected not only through the LFPPI, but also by other laws, including the Federal Labor Law and the Federal Criminal Code.

The trade secrets regime in Mexico is quite complex due to the formal standard statutorily required and its application in practice before IMPI and judges. More often than not, plaintiffs failed to adopt sufficiently strong measures and mechanisms to demonstrate prior notice and adequate protection of confidentiality to trigger the claim's admission, as well as to demonstrate that a trade secret exists and can be enforced.

The LFPPI defines a trade secret as all information of industrial or commercial application that the person who exercises its legal control keeps confidential, which means obtaining or maintaining a competitive or economic advantage over third parties in the performance of economic activities and in respect of which it has adopted the means or systems sufficient to preserve its confidentiality and restricted access to it.

Trade secret protection heavily relies on the owner's proactivity and creativity to develop and implement a compliance culture within the company. Standard actions to protect trade secrets include, but are in no way limited to confidentiality clauses, non-disclosure agreements, employee and vendor trainings and policies designed to timely inform and protect trade secrets, as well as regular updates to these mechanisms, as necessary.

c. Patent protection

i. Patent Practice

According to the LFPPI, patents in Mexico are protected for a term of 20 years from the date the application is filed. Complementary Certificaes are available for applications filed in Mexico after November 5, 2020, if the issuance of the patent is delayed to more than 5 years from the filing date in Mexico. If applicable, the term of the patent shall be extended one day for two days of unreasonable delay accordint to LFPPI.

In that regard, for an invention to be awarded protection as a patent, the same must be (i) new; (ii) result of an inventive step; and (iii) susceptible of being industrially applicable.

Despite patents obey the principle of territoriality, the owner of a foreign patent can secure protection in Mexico by filing an application which claims priority rights over a foreign application during the term provided by the Paris Convention (12 months from the priority filing date) or by applying to a National Phase entry in Mexico if the foreign application was filed before WIPO under the Treaty of Patent Cooperation ("PCT") (30 months from the priority filing date).

According to the LFPPI, titleholders of Mexican pending or granted patents may license or transfer its rights over the same as long as such ownership changes are recorded before the Mexican Industrial Property Institute ("IMPI"). If they are not registered, such ownership changes will not produce effects against third parties.

ii. Patent Prosecution Highway Program

Mexico is part of the Patent Prosecution Highway ("PPH") Programs with countries like United States, Spain, Japan, China, South Korea, among others. Through the PPH program it is possible to considerably reduce substantive examination timeframes of patent applications in Mexico by amending the claims of a Mexican application to mirror those granted by a foreign country which has a PPH agreement with Mexico. The PPH shall be requesed before substanive examination of a patent application begins.

In addition to the above, from the end of 2023, the Accelerated Patent Grant Agreement ("APG") is available to accelerate the granting of Mexican applications. It is possible to apply to the APG if the application has a corresponding patent granted (published) by the United States Patent and Trademark Office ("USPTO"). APG can even be requested after examination has begun and before the response to the 3rd Official Action. In contrast with PPH, there are more possibilities that a Mexican application is granted with the APG by adapting the claims to those granted by the USPTO.

iii. Utility models and Industrial Designs

Utility models are those articles, utensils, devices or tools that present a different function with respect to the parts that compose them or the advantages in terms of their usefulness. A utility model is protected for a non-renewable term of 15 years from the date of its application.

Insofar industrial designs, the same are divided into:

(i) industrial drawing which are defined as any figure, line or color combination embedded into an industrial product with ornamental purposes; and

(ii) industrial model which are defined as three dimensional shapes used as a patron for the manufacture of industrial products and which has a unique appearance as long as it does not involve technical effects.

In any event, the term of protection for the above detailed industrial designs is of 5 years with the possibility of renewing the same for 5-year periods up to a maximum of 25 years.

It is important to consider that, in a similar way to the implementation of the Madrid Protocol in 2016, Mexico has joined the Hague Agreement regarding the international deposit of Industrial Designs or Models. Being part of such international Treaty has the intention of simplifying prosecution of industrial design applications for both national and foreign titleholders.

3. Copyright

Although the Federal Copyright Law ("LFDA") establishes a procedure to register works in Mexico, a copyright does not require registration to ensure copyright protection. However, when it comes to protection issues, it is highly recommended to submit an application to register a copyright as the registration certificate would be helpful as evidence in a potential action, considering that the Mexican authorities tend to be more formalistic in copyright infringement claims, with regard to copyright ownership.

The LFDA defines copyright as the economic and moral rights over a literary or artistic work that the creator of the work owns and that are recognized by the state. The owner of the economic rights can authorize the temporary or permanent exploitation of the copyright by means of a license or an assignment contract.

According to the LFDA, the following types of works, among others, can obtain copyright protection: literary, musical, dramatic, dance, paintings or drawings, sculptural or plastic, caricatures, architectural, cinematographic, audiovisual works, radio and TV, computer software and photograph, as well as compilations, as long as they constitute intellectual creations.

Violation of copyright is considered a crime punishable by imprisonment, among other sanctions. In addition, Mexican law allows copyright holders whose rights have been violated to file civil lawsuits to obtain available legal remedies, including the collection of compensation for damages, loss of profits, and precautionary measures.

The maximum amount of compensation is not limited by law; however, the LFDA establishes that the amount will be equal to at least 40% of the total sales value of the offender.

Recently, in an attempt to further increase the protection afforded to works protected by copyright, the Mexican Criminal Code was amended to impose harsher penalties on those who illegally use works protected by copyright without the consent of their rightful owner.

It is worth mentioning that the last amendment to the LFDA recognized the existence of a safe harbor for internet service providers and application providers or online platforms. Therefore, these entities are not liable for the content uploaded by their users, provided that they comply with certain requirements, including, among others: (i) not taking part or directing in the infringement; (ii) maintaining mechanisms to identify possible infringements and take them down (notice and take down mechanisms). Platforms must take down the allegedly infringing content, as soon as they are made aware of the same, taking reasonable measures for that content not to be uploaded again, which can be through policies, algorithms or other technological measures. Nevertheless, Internet Service Providers are not obligated to supervise or monitor their systems or networks to actively search for possible copyright or related rights violations occurring online. Although, they may proactively monitor to identify content that violates human dignity, is intended to nullify or impair rights and freedoms, as well as content that encourages or advocates violence or any crime.

Real estate

1. Introduction

This memorandum provides a brief overview of selected aspects of Mexican real estate law that is relevant to non-Mexican investors considering commercial and industrial real estate opportunities in Mexico, including regulation of foreign investment, conveyance of title and financing. The memorandum begins with a short description of the various types of non-public land in Mexico.

2. Laws applicable to real estate transactions

The Mexican legal system is a civil code-based system. The local civil code and other local laws of the jurisdiction generally govern a real estate transaction where the property is located.

Real estate transactions in Mexico are subject primarily to civil law as opposed to commercial law, to which they may be subject when the main corporate purpose of the parties involved in a given transaction is to commercialize real estate. Civil law is within the jurisdiction of the states; commercial law falls under federal jurisdiction, governed primarily by the Federal Code of Commerce. There is substantial uniformity among the different civil codes and related statutes of the states. In addition, other local codes and laws of the jurisdiction where the property is located may be applicable if there are, for example, zoning, infrastructure, environmental, sub-soil rights and/or foreign investment matters related to the transaction.

3. Categories of real property

Generally, non-public land in Mexico falls into two categories: "private" property and "social" property. In turn, social property is usually divided into two subcategories: "Ejido" property and "communal" property. The owners of each type of land possess different rights to use and transfer their property, as outlined below:

a. Private property

Individuals or legal entities for their own exploitation and use own private property. Private property rights conveyed, in most cases, through sales contracts or trust agreements. Each of these methods discussed in detail below.

Conveyances of title are recorded before the Public Registry of Property in the appropriate jurisdiction. Although there are some exceptions, such as subsoil rights, private property generally has no limitation on domain.

b. Ejido property

Ejido property is land granted by the Mexican government to individuals for agricultural and ranching purposes. The Mexican Agrarian Law governs Ejido property. Ejidos are structured as communities or townships. They have internal administration and surveillance boards, respectively known as the "*Comisariado Ejidal*" and the "Comité de Vigilancia." Ejido property may exist either for the exclusive use of an individual beneficiary ("Ejidatario") in the form of "Ejido Parcels", or for the common benefit of the Ejido community in the form of "Ejido Community Parcels".

All Ejido properties are inalienable and not subject to liens or attachments. Only through a complex and formal legal procedure, may an Ejido parcel be liberated of the Ejido property regime and converted into private property. All Ejido Property is recorded before the National Agrarian

Registry. In the event of liberation from the Ejido regime, the land is registered before the Public Registry of Property in the appropriate jurisdiction and will be subject to civil law provisions (as opposed to agrarian law provisions).

c. Communal property

Communal property shares virtually all characteristics of Ejido property, with the exception that there are no exclusive parcels for individual beneficiaries. The Mexican Agrarian Law also governs communal property. Instead, all parcels belong to the community for its common use and enjoyment. Similar to Ejido property, and except for certain specific cases, communal property is inalienable and not subject to liens or attachments. Likewise, communal property is also recorded with the National Agrarian Registry. This kind of property can be liberated from its communal regime and converted into private property; however, this involves a complex and formal legal procedure. In the event of liberation from the communal regime, the land would be registered before the Public Registry of Property in the appropriate jurisdiction and subject to civil law provisions (as opposed to agrarian law provisions).

4. Foreign investment in real estate

The Mexican Foreign Investment Law ("FIL") and its Regulations impose special restrictions on real estate ownership by foreign investors, depending on where the property is located.

5. Limitations on acquisition of property within the restricted zone

Under the Mexican Constitution, foreigners cannot acquire land lying within 50 kilometers of the coastline or within 100 kilometers of the land borders ("Restricted Zone"). This area encompasses approximately 40% of land in Mexico. Under former foreign investment legislation, the only way foreign investors were permitted to own such real estate was through real estate trusts, with local banking institutions acting as trustees and foreign investors acting as beneficiaries/possessors/occupants. The creation of such trusts, with a term of duration of up to 30 years, required approval from the Ministry of Foreign Relations ("SRE") under the former foreign investment legislation. Under such regulations, in order for the SRE to approve the creation of such real estate trusts, the beneficiaries had to be foreign investors, and:

1. The real estate in trust had to be used exclusively to carry out tourism or industrial activities.
2. The companies engaged in the above activities had to be registered with the Foreign Investment Registry.

The former foreign investment legislation broadly defined "industrial and tourism activities to include the construction, sale, lease, establishment, exploitation and operation, for the foreign investor's own account, of buildings and structures as disparate as industrial, hotel and residential parks and developments; housing facilities for employees of industrial and tourism companies; shopping centers; research centers; and tourism marinas.

Under the current FIL, foreign investors can now own non-residential real estate through a Mexican corporation instead of a trust. While trusts are no longer necessary for foreign ownership through a Mexican corporation of real estate used for commercial, industrial or hotel-related purposes, they are still required for residential property and for direct foreign ownership in the Restricted Zone.

6. Limitations on acquisition of property outside the Restricted Zone

Mexican law permits the acquisition of dominion or title over land and over mining and water concession rights by foreign individuals outside of the Restricted Zone under certain conditions. Individuals may acquire direct title over land and over mining and water concession rights by obtaining a special permit from the SRE and by agreeing to what is known as the "Calvo Clause"[19]

7. Sub-soil rights

Pursuant to Article 27 of the Mexican Constitution, the State has direct dominion with respect to minerals, water and hydrocarbon resources that exist below the land's surface. Private parties through a concession from the Federal Government may carry out the exploitation of mineral and water deposits, excluding hydrocarbon fuels. Concession rights on minerals are recorded in the Public Registry of Mining, while water rights are registered with the National Water Commission.

In addition, and because of the Mexican Hydrocarbons Law, exploration and production of petroleum (upstream activities) are considered of social and public interest; hence, they should prevail over any other activity implying the exploitation of the surface or subsoil of lands affected by the same.

In connection therewith and pursuant to the terms of the Mexican Hydrocarbons Law and its Regulations, for the exploration and production of petroleum activities, the terms, conditions as well as the consideration for using, enjoying or encumbering lands, property or rights necessary to perform such activities must be negotiated by the contractors or entitlement holders ("Interested Party") with the owner of the land, or with the holders of the rights or assets ("Owner"). The negotiation will be carried out considering the following process.[20]

1. The Interested Party will express in writing its interest of using or acquiring the property, land or right to the Owner ("Expression of Interest").

2. The Interested Party must describe the project that it intends to develop under the corresponding entitlement or exploration and production contract.

3. The Interested Party must notify to the Ministry of Energy ("SENER") and to the Ministry of Agrarian, Territorial and Urban Development ("SEDATU") about the negotiations with the Owner.

4. The Interested Party through a lease, easement, superficial or temporary occupation, and sale may occupy the Owner's property or any other suitable contract for the development of the project, as long as it does not contravene the applicable legislation.

5. The consideration payable to the Owner should cover: (i) the payment for affecting property or rights, as well as the possible damages and lost profits arising from the performance of upstream operations; (ii) the rent regarding the occupation, easements, or the use of the land; (iii) in the case of extraction of petroleum projects, a percentage of the revenue of the Interested Party in the project. In such case, SENER assisted by the National Hydrocarbons Commission (CNH) will establish the methodology, guidelines and parameters for the determination of the revenue percentage. The consideration may be paid in cash.

6. The consideration, and the other terms and conditions for the occupation of property or affecting goods or rights, should be determined through a contract in writing, pursuant to the model contracts issued by SENER considering the opinion of SEDATU.

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19. A foreign national must agree not to seek the protection of its government, otherwise being subject to forego its rights over the property acquired for the benefit of the Mexican State.
20. According to Article 117 of the Hydrocarbons Law, this same procedure is also applicable to the acquisition, occupation or affectation of lands, assets or rights necessary to conduct activities of transportation through pipelines and Surface Acknowledgment and Exploration activities.

Furthermore, if the land, assets and rights fall within any of the regimes of the Mexican Agrarian Law, the provisions of this law will also apply.

The contract reached between the Interested Party and the Owner should be submitted before a civil district judge or before a Unitary Agrarian Court ("Courts"), in order to have full validity, by considering it as res judicata. The Courts will validate whether the contract complied with the requirements provided by the applicable regulations.

If parties do not reach a contract after 180 calendar days as of the date of reception of the Expression of Interest, the Interested Party may file before any of the Courts the request for the creation of a legal petroleum easement that will comprise the right for individuals to transit and the right of transportation and conduction and storage of materials of any kind. On the other hand, the Interested Party may also request before SEDATU a mediation that should deal with the forms or models of acquisition, occupation, enjoyment or encumbrance of the lands, property or rights as well as the relevant consideration.

8. Property conveyance under Mexican law

Real estate transactions in Mexico are subject primarily to civil law as opposed to commercial law, to which they may be subject when the main corporate purpose of the parties involved in a given transaction is to commercialize real estate. Civil law is within the jurisdiction of the states; commercial law falls under federal jurisdiction, governed primarily by the Federal Code of Commerce. There is substantial uniformity among the different civil codes and related statutes of the states, especially with respect to the conveyance of real estate. In most respects, the model for the various states' civil codes are the Civil Code for the Federal District (now Mexico City) and the Federal Civil Code, which is also the applicable code when provisions of civil law are to be applied to federal matters. Judicial conflicts involving real estate are within the jurisdiction of the courts of the state where the property is located. Because the laws of all states are generally patterned after the Civil Code of the Federal District (now Mexico City), this discussion concerning the principal methods of property conveyances (sales and trust) will be based on said Code.

a. Funding of real estate transactions

Institutional lenders such as banks, non-bank banks, and investment funds, usually fund real estate transactions. Interest rates are based on the rate published by the central bank. A borrower usually pays for all costs, including the lender's costs.

A lender usually asks for collateral security in real property and related assets. The formalities to create and perfect a lien depend on the type of goods or assets to be encumbered. Certain liens require to be recorded with the applicable Public Registry.

The following are the most common collaterals in Mexico:

- Mortgage or guarantee trust over a real property.
- Stock pledge on the project entities.
- Floating pledge over inventory.
- Pledge without transfer of possession over non-fixed assets.
- Personal guarantee granted by the holding entity or the majority stockholder;

b. Types of conveyances

i. "Fee simple" conveyance

The most direct way to convey property in Mexico is through the equivalent to "fee simple" conveyance when permitted. The buyer and seller simply execute a public instrument, prepared by a notary public, which contains the sales contract and title transfer, where the parties must express their mutual consent to all material terms applicable to the transaction that is, price, property boundaries, terms of payment, etc. Sometimes, a prospective seller and buyer will first sign a binding promise to purchase and sell agreement or a letter of intent, which typically contain contingencies and/or conditions precedent upon which compliance the actual obligation and/or decision to execute the purchase and sale is subject to. To be valid and enforceable, the preliminary sales agreement must contain the essential elements of the final sales contract that is to be formalized before the civil law notary public, such as identification of the parties, description of the real property subject matter of the agreement, price and term.

For a conveyance of title to be valid and deemed effective as against third parties, it must be recorded before the Public Registry corresponding to the place of location of the real property, which is the administrative entity in charge of maintaining the official records of the legal status of title and possession of real estate. A review of those records would reveal limitations of domain and/or use burdening the property such as easements, liens or encumbrances.

As discussed in more detail below, certain formalities must be observed when conveying title to real estate. In particular, the transaction must occur before a notary public and be recorded with the corresponding Public Registry of Property. A notary public is not necessary for adverse possession proceedings. However, a successful adverse possessor must record its title with the appropriate Public Registry of Property.

ii. Title retention and conveyances

In some instances, the seller of property may retain title until the occurrence of a contingency, usually a final payment agreed upon. Aside from the retention of title, the steps involved in the transaction are similar to those in a straight title transfer sale. Title passes upon receipt of the last payment. At such time, the buyer and seller must appear before a notary public and sign a public instrument indicating that full payment has been received and title has passed. This instrument then is recorded with the applicable Public Registry of Property.

In addition, the seller and buyer may agree that title to a real property is conveyed until certain conditions precedent are complied with or that the conveyance of title may be resolved if certain conditions subsequent are met, in which case the buyer and seller must appear before a notary public and sign a public instrument indicating the same. The instrument must then be recorded with the applicable Public Registry of Property.

Title may be conveyed subject to a mortgage. Often, the title and mortgage documents are prepared simultaneously before a notary public. The title document is registered before the mortgage document. In the event of the buyer's default, a summary judicial proceeding is initiated to foreclose. In certain circumstances, the mortgagee may be entitled to have the property adjudicated in its favor rather than publicly auctioned off.

iii. The trust regime

Pursuant to the FIL, Mexican financial institutions (usually banks) authorized to act as trustees may acquire "fee simple" to real estate located in the Restricted Zone through an irrevocable trust. Under a typical trust arrangement, the Mexican financial institution acts as trustee. Foreign individuals, foreign legal entities or Mexican companies whose shares may be purchased by foreigners are designated as beneficiaries. These trusts have duration of 50 years and may be renewed by the foreign investor.

The beneficiary's rights to enjoy the land, the rental proceeds and profits upon the sale of the property held in trust are freely transferable. Trust agreements must be recorded with the Foreign Investment Registry and the Public Registry of Property.

c. Formalities and procedural steps for the conveyance of title

All state civil codes generally require that any contract whereby an interest in real estate is conveyed or otherwise affected, be formalized through a "notarial instrument" (escritura pública) and recorded before the corresponding Registry of Property (normally in the city or municipality where the real estate is located). In standard sales or trust conveyances, the parties appear before a notary public to request the preparation of the public instrument that contains the title conveyance. A civil law notary public is a quasi-public official who is vested with irrefutable authority to attest to the veracity of the legal transactions formalized before him/her. A civil law notary public is generally required to be a licensed attorney who undergoes substantial qualification procedures to ascertain his/her capabilities. A notary public will often participate in transactions based on neutrality, although the party that acquires a legal interest on a real property customarily bears the expense of the notary's fees. In larger transactions, separate counsel, in addition to the notary's participation, represents the parties.

The notary public generally requests a copy of title held by the seller/trustor (generally another public instrument), an expert's appraisal on the property, a certificate of no liens and encumbrances issued by the Public Registry of Property, a certificate-evidencing non-fiscal or utility consumption fees indebtedness and, in certain cases, a sales or trust permit from the SRE. The notary public also will require information on the seller's legal capacity and marital status, as applicable. In case the party involved is a legal entity, the notary public will need information on the formation of the company as well as the legal capacity and authority of its representatives.

In addition to formalization through a public instrument, real estate transactions (namely acquisitions, mortgages, easements, leases for terms typically greater than five years, etc.) are instruments subject to be recorded in the Public Registry of Property. Thus, the status of title to a property may be verified through a search on public records. In addition, the Registry must, upon request, issue a "certificate of liens" or a "no liens certificate", in its case, which reflects the identity of the holder of title and whether the property is subject to any liens or other real or personal interests, (when the latter are subject to being recorded).

Upon execution of the notarial instrument through which the acquisition of the real property is formalized, the civil law notary public is required to immediately file a preventive notice before the corresponding Public Registry of Property. The preventive notice assures that all subsequent transactions dealing with the same real property will be subject to the effects of the transaction to which the preventive notice refers. It is imperative that the preventive notice be filed expeditiously since the public notice consequences of the transaction between the contracting parties will be effective only as of the filing of the preventive notice regardless of the moment in which the parties executed the document before the notary public. After the filing of the preventive notice, the notary public must pay the corresponding fees and taxes and file the documents as may be required for the formal recording to be effected.

Prior to the registration of a real property purchase and sale contract with the Public Registry of Property, buyer (as described in more detail below) shall pay the real property acquisition tax. After the payment is made, the public instrument containing the formalization of the sales contract shall be filed with the Public Registry of Property. According to the Regulations of the Public Registry of Property, it generally takes around 10 business days for the public instrument to be duly recorded. In practice, however, this term may either be limited to a few business days or last for weeks, depending on factors such as jurisdiction, the follow-up made by the notary public, the complexity of the real estate transaction being recorded, and on the general recording work then currently in process before the Public Registry of Property of other real property and commercial transactions.

d. Warranties given by a seller to a buyer

Generally, sellers tend to grant only limited representations and warranties, typically related to the absence of liens and encumbrances, and payment of real estate taxes, which provide an indemnity to the buyer in case of eviction. Thus, a buyer is generally responsible for conducting an extensive due diligence with respect to the legal and physical condition of the property to be acquired. It is also relatively common to include provisions and warranties that deal with liabilities arising from the environmental conditions of the property, hidden defects, conditions of title, absence of legal proceedings, infrastructure and utilities available on site, etc.

9. Ensuring good title

Notaries play an important role in verifying the validity of title and ensuring its proper conveyance to acquiring parties. That being said, notaries rely on the validity and authenticity of documents furnished to them by the parties. As a result, a notary public is not likely to identify defects affecting the chain of title to a property or title problems not evident in the documents furnished in connection with the transaction, which is why it is advisable to perform further independent legal investigation. Unless otherwise stipulated in the contract, the party that conveys title would be liable for curing any title defects.

Generally, due to the conveyance system in Mexico, real property transactions result in a valid and unencumbered transfer of real estate. However, the only way to verify the validity of title and other related rights is to undertake an independent search of records with the Public Registry of Property and other applicable government agencies, such as the National Agrarian Registry, the Public Registry of Mining, the National Water Commission and local assessment bureaus (such as the Municipal Treasury, Public Works and Urban Development Department, etc.). This is especially advisable when a concern about an adverse possession claim exists. Under Mexican law, adverse possessors may claim title through a complex process that sometimes results in inconsistent, dual ownership title registration.

Due diligence in real estate transactions will typically include a title search and a title report by counsel. The search and report will cover issues such as the following:

- Limitations on the use of property as dictated by any applicable zoning ordinances, road expansions, etc.
- Limitations on the use of the property imposed by owner or governmental authorities, such as usufructs, easements, and federal zone limitations, etc.
- Pending claims against the property by third parties or liens of record.
- Limitations or requirements which may be contained in any restrictive covenants of record.
- Conveyances of partial real interests on the property such as usufruct.
- In some states, long-term leases.

In addition, certain interests or liens may affect real estate, which would not necessarily be revealed by a Certificate of Liens issued by the Public Registry of Property or by a search of such records. Some of these interests could run with the land and pass to succeeding holders of the estate, such as the following:

- Agrarian or ejido interests.
- Precautionary labor attachments.
- Municipal assessments for public improvements and property taxes.
- Street or municipal improvement dedications.
- Unpaid utility charges or users' fees or rights.
- Nonconforming uses pursuant to restrictive covenants not of record.
- Discrepancies, conflicts or shortages in area or boundary lines, encroachments and any overlapping.
- Rights of third parties in possession.

In light of the above, the legal counsel's title search and opinion should cover not only the records in the Public Registry of Property but also the elements necessary to ascertain that none of the above potential risks is present.

It is also relevant to perform certain technical assessments on the real property to ensure that it complies with Mexican laws and is suitable for its intended use. Technical assessments include environmental, topographical, geotechnical, etc. surveys, which are typically coordinated by Mexican legal counsel with certified surveyors.

Specially in the case of rural properties, it is of vital importance to conduct the necessary research to verify that the property is not subject to ejido interests, which as mentioned above are rights afforded by the State to possessors who are entitled to benefit from the property but that may not have a conveyable interest.

In the case of industrial or commercial properties, which are already developed, it is important to verify the nonexistence of labor claims that may affect the property. In general, under Mexican law, employees' rights have preference over other creditors.

Insurance companies, mostly of US origin, offer title insurance for real property located in Mexico. When dictated by the buyer's corporate policy, and subject to exceptions made on a prospective policy and its cost, it may be convenient to negotiate and contract title insurance. Through these policies, adopted from the United States where the same are widely known and commonly used, if the title is validly challenged, the insurer will come to the buyer's defense. In the event of an unsuccessful defense, the insurer will indemnify the buyer for its damages up to the insured amount. Title insurance is not a legal requirement to convey real property in Mexico. For the most part, only larger real property transactions or those where institutional developers are involved are typically subject to the issuance of these policies, generally because of the cost involved and up to the limited coverage and endorsements included in the policies in this market.

10. Planning issues

In general terms, municipal authorities have jurisdiction over land use (commonly enacting urban land use development plans), but federal and state authorities may also enact different general provisions (such as zoning laws), which set standards as to the use that may be given to determined areas.

The federal, state and municipal authorities may also establish limits to land uses derived from the enactment of different kinds of environmental regulations. Some examples of this would be the enactment of environmental land use programs or the creation of natural protected areas, which establish certain restrictions as to the activities that may be developed in a determined area and/or establish limits to the density of developments, where the same are allowed.

Federal land is regulated by the federal government, and depending on the kind of property, a specific ministry may have authority over land development. As an example, SEMARNAT has authority over the federal maritime land zone, which comprises 20 meters of beach adjacent to the seashore.

At the municipal level, land use and construction licenses are commonly required, as well as an occupancy (or work completion) license and an operating license, to be able to perform activities on the premises to be built or occupied.

Other permits, licenses or concessions commonly required either at the federal or local levels include the following:

- Environmental impact authorization.
- Consolidated environmental license.
- Concession for the occupation of a federal zone.
- Federal permits to build on a federal zone.

11. Environmental issues

Per the General Law for the Prevention and Integral Management of Waste, whomever is in possession of a real property, before the environmental authorities, is jointly and severally liable with the owner of the property and with whomever contaminated the same, to carry out the remediation required by such contamination. In addition, As of June 16, 2013, the federal government enacted the Federal Law of Environmental Liability ("Ley Federal de Responsabilidad Ambiental"), which determines the liabilities for environmental damages in addition to the civil, criminal or administrative liabilities for the same.

The aforementioned law regulates the liability derived from the damages caused to the environment, as well as the remediation and compensation of such damages when the same are enforceable through the applicable judicial or administrative procedures.

With regard to remediation, the General Law for the Prevention and Integral Management of Waste establishes that in case of contaminated land, where pollution exceeds the applicable standards, clean-up will be required. Five standards classify and/or establish specific limits to the discharge and use of certain pollutants:

- PCBs (NOM-133-SEMARNAT-2000).
- Hydrocarbons (NOM-138-SEMARNAT/SSA1-2012).
- Heavy metals and other hazardous pollutants (NOM-147- SEMARNAT/SSA1- 2004).
- Special waste handling (NOM-161-SEMARNAT-2011).
- Waste waters (NOM-001-SEMARNAT-1996/NOM-002-SEMARNAT- 1996/NOM-003-SEMARNAT-1997).

Other pollutants may require a risk study to evaluate if clean-up is required.

Aside from the above, it should be noted that the conveyance of contaminated land requires prior authorization from SEMARNAT and that the environmental authorities may request remediation either from the owner or current occupier of the property, even if the discharge, generation, management, leak or incorporation of materials and/or hazardous waste was caused by a third party or by the former owner.

12. Taxes and fees on real estate transactions

Taxes and fees payable in respect of real estate transactions in Mexico include the following:

a. Real Estate Acquisition Tax

An irrevocable conveyance of title to real estate is subject to the Real Estate Acquisition Tax. The REAT applies upon the formal conveyance of title to any real estate, with certain exceptions. Generally, the tax rate is between 2% and 3% of the highest of appraised Cadastre value or transaction value of the real property subject matter of the transaction.

b. Value Added Tax

Mexico imposes a Value Added Tax ("VAT") on all purchases of goods and services in the country, with certain exceptions. The general rate is 16% of the value of the product or service, subject to certain exceptions where special rates apply. The VAT applies to the acquisition of buildings, constructions or improvements on land, as well as construction services, but does not apply to acquisition of land itself and there are certain exceptions, such as the acquisition of residential real property. The VAT normally operates by having each party in the chain of production collect tax from its customer and pay to the tax authority the difference between the tax paid to its suppliers and the tax collected from its customers. Therefore, parties that acquire real estate and that are engaged in commercial activities may generally claim a credit or refund of the VAT paid.

c. Recording fees

Although most states have a set maximum for recording fees, recording fees in certain states have no limit and are set as a percentage over the transaction value of the real estate conveyance. In states that do not have a limit, recording fees typically range from 0.4% to 0.8% of the transaction value.

d. Appraisal fees

Pursuant to the Law, appraisals must be performed in real estate transactions in order to determine the tax base for the transfer. In certain states, the appraisal is issued by the Municipal Treasury ("Cadastre office") and in other States an appraisal must be performed

by a commercial broker or a certified appraiser certified by a banking institution. The normal cost for the appraisal and the bank's certification is 1% of the transaction value, although such compensation is often negotiable.

e. Brokerage, notarial and legal fees

Commercial brokerage and notarial fees in Mexico are normally in the 0.5% to 1.0% range, which can usually be negotiated and vary widely. Legal advisor fees for a real estate transaction are typically charged on an hourly basis.

13. Leasing

Mexican applicable law recognizes the following forms of leases:

- **Civil:** The civil leases may be determined by exclusion, such as when a lease is not commercial, administrative or financial. According to Mexican law, commercial transactions include acquisitions, transfers and leases executed with the intent of commercial speculation.
- **Commercial:** Commercial leasing of real estate is not recognized, even if there is intent to obtain profit, due to the lack of recognition from Mexican laws and the provisions of the Mexican Supreme Court, which holds that real estate leases are always of a civil nature.
- **Administrative:** A lease is administrative in nature if the leased premises belong to the Mexican federation, states or municipalities and is regulated by the applicable administrative law.
- **Financial:** Financial leases are regulated in the General Law of Auxiliary Credit Organizations and Auxiliary Credit Activities.

Most of the provisions governing lease agreements are included by statute in Mexican civil codes; each state has its own applicable civil code. However, parties may freely discuss and determine other terms to regulate the lease and all its legal consequences, except for those provisions that by law are not subject to be waived.

With regard to the term of a lease, most state codes provide that a lease term shall not exceed a certain term specific to different types of use, generally 10 years for residential use and 20 years for commercial and industrial use. When the parties do not stipulate the term of the lease, the lease may be terminated generally upon two months' prior notice from one party to the other if the property is urban and one year's notice if the property is rustic. In addition, the property owner and the tenant may freely agree in the lease agreement on the extension options that they may deem mutually convenient. As well, most civil codes provide a one-year statutory extension right for the tenant, as long as the tenant is current on the payment of the rent. Moreover, if upon the termination of the lease term and renewal, if any, the tenant continues with the use and enjoyment of the leased premises without opposition from the property owner, the lease will be deemed to continue for an indefinite time as a month-to-month lease. On leases where tenant has had possession of the premises for a term over three to five years, the tenant will have the right to be preferred, under equal conditions, over any other interested party for a new lease, provided it fulfilled all of its obligations and performed timely payments of the rent.

14. Landlord/Tenant Law

The following is intended to provide a brief overview of some of the more pertinent provisions of Mexican law and practice affecting property owners and tenants.

1. Rent controls: The only important rent control statute in Mexico is the one that applies in the federal district (now Mexico City), which provides that in certain leases annual rentals may not be increased by more than 85% of the percentage of increase of the minimum wage for the renewal year.

2. Net-Net and Triple-Net Leases: Net-Net and Triple-Net leases are the norm for industrial and commercial facilities.

3. Right of first refusal: Landlords are required to grant all tenants occupying space for a certain term a right of first refusal in the event the premises are sold. The tenant may waive this right in the lease, and such waiver is customary.

4. Payment in foreign currency: Leases may provide for payment in foreign currencies provided, however, that a Mexican tenant has the legal right to choose to pay such rent in pesos at the then-prevailing official exchange rate as published by the Bank of Mexico in the Federal Official Gazette.

5. Withholding tax: In general, terms, lease payments made to foreign property owners are subject to income tax withholding at a general flat rate of 21%.

6. Eviction procedures: Eviction procedures in Mexico are more lengthy, cumbersome and expensive than in the United States. Although the property owner has the legal right to evict a tenant under the lease for a default in payment of rent for more than two months, misuse of the premises and breach of the lease terms, in practice the tenant is provided with procedural advantages that can significantly delay the eviction process. Notwithstanding the above, in some states of the Mexican Republic, there are summary or oral trials for leases that significantly reduce the time and difficulty in these processes, in which even judges tend to, favor property owners in clear cases of noncompliance on the part of the tenants.

7. Guaranty: A security deposit equal to one or two months' rent is a common requirement for commercial and industrial leases. It is also common for a property owner to require that rental interruption insurance, a bond or a corporate guaranty of lease be granted by the tenant's parent company as further security of the tenant's obligations under the lease.

8. Warranty of habitability: Mexican law does not impose upon the property owner special or implied warranties with respect to the suitability or habitability of the leased premises for their intended purpose, except for certain health conditions.

15. Mortgagor/mortgagee law

Mortgagees in Mexico typically utilize the following arrangements to secure the borrower's payment obligations:

a. Mortgages

Mortgages, still the most common means of security in Mexico for real estate financing transactions, must be granted in a contract executed before a notary public. Notarial fees vary but normally are in the 0.5% to 1% range. In most cases, foreclosure of a mortgage requires that a special summary judicial procedure be undertaken. If the cause of action were proven, a court order would be issued for the public auctioning of the mortgaged estate to satisfy the debt.

The mortgagee may also be entitled, under certain conditions, to have the mortgaged property adjudicated to it instead of being publicly auctioned. If a foreign lender were to have the property adjudicated in its favor, it would have to do so with authorization from the SRE, which would be granted subject to the condition that the lender transfers the property in favor of a qualified third party within five years after the adjudication.

b. Guaranty trusts

Under certain circumstances, loans are secured through a guaranty trust. Guaranty trusts operate as follows:

1. Title to the assets, which secure the loan (i.e., real estate, equipment, inventories, etc.) in Mexico, are conveyed in trust by the debtor to a Mexican bank ("Trustee") through the execution of a guaranty Trust Agreement. The Trustee holds the fiduciary title for the exclusive purpose of guaranteeing compliance by the borrower with the terms of the loan, and until the borrower has paid all amounts owed to the lender.

2. In case of default, assets may be liquidated through either an out-of-court or a judicial procedure to satisfy the debt.

c. Assignment of rents

The assignment of lease payments is becoming quite prevalent in real estate financing transactions. In cases when a non-Mexican entity has guaranteed the payment of rentals by the tenant, the borrower also usually assigns the guarantee to the lender.

d. Assignment of tourism proceeds

In tourism projects, it is common for the operator of a tourism facility in Mexico (such as a hotel, marina, etc.) to have contracts with non-Mexican agents who sell the services of the Mexican facility to foreign tourists. As additional security, the Mexican developer or operator will often assign the proceeds of the contract with the foreign agent to the foreign lender. This can normally be structured as a non-Mexican source of repayment.

e. Assignment of performance bonds

In construction projects, the borrower will offer the assignment of performance bonds posted by the general contractor. The lender will normally participate during the negotiation and formalization of the construction contract to ensure that its interests are protected in the event project difficulties arise because of default on the part of the general contractor.

16. FIBRA, FIBRA E, CKD's and CERPI's

Below you will find a brief description regarding FIBRAs, CKD's and CERPI's in Mexico.

a. FIBRAs (Infrastructure and Real Estate Trust)

Infrastructure and Real Estate Trusts ("FIBRAs") are the Mexican version of Real Estate Investment Trusts ("REITs"), which have been operating in the US for many years. Real estate developers create the FIBRA by contributing real estate in exchange for real estate stock certificates. Afterwards, the FIBRA makes a public offering of the real estate stock certificates based on certain eligibility criteria established in the FIBRA documentation, and the resources obtained from the public offering is used to develop or to acquire the properties and real estate. Subsequently, the developer carries out the administration activities of the real properties that are part of the FIBRA assets through an administration agreement executed by the FIBRA trustee and the developer.

Upon investing in a FIBRA, investors obtain (i) periodical payments in the form of leases; and (ii) capital gains of the acquired or developed real estate that is part of the FIBRA assets; in addition to certain tax benefits as holders of real estate stock certificates.

FIBRAs are traded in the Bolsa Mexicana de Valores, S.A.B. de C.V. and/or Bolsa Institucional de Valores, S.A. de C.V. (**"Mexican Stock Exchange"**) and must comply with the following:

- To be a trust incorporated based on Mexican Law through a Mexican trustee institution.
- Its main corporate purpose must be to acquire or develop real estate for leasing purposes or to hold rights to receive income from the real estate leases.
- The acquired or developed real estate may not be transferred for a four-year period as of the acquisition date of the real estate property or as of the completion date of the property's development.
- At least 70% of its assets shall be invested in real estate or rights to receive income derived from the real estate leases.

b. Fibra E (Energy and Infrastructure Investment Trust)

Energy and Infrastructure Investment Trusts is the Mexican version of MLP's and YieldCo, which are focused on mature projects that already earn stable cash flows. The trusts are issuers of publicly traded securities in the form of stock certificates or *Certificados Bursátiles de Inversión en Energía* e *Infraestructura* ("CBFEs") listed in the Mexican Stock Exchange and registered with the National Securities Registry. They have an external manager or **General Partner** and allocate public funds obtained in Mexican private companies residing in Mexico (**"Promoted Companies"**) which activities are related to: (i) hydrocarbons and natural gas (with some rules and exceptions); (ii) generation, transmission and distribution of electric energy; (iii) infrastructure; and (iv) administration of Fibras E.

The sponsor contributes to the Fibra E its equity interest in the Promoted Companies in return for stock certificates of the Fibra E. A Manager or General Partner manages the Fibra E and has the rights to receive a management fee. The Manager's variable fee or success fee are subordinated to the holders.

70% of the annual average value of the Fibra E assets must be invested in the Promoted Companies' capital stock and the remaining 30% in Federal Government securities or in companies that invest in debt instruments. 90% of the Fibra E annual taxable income shall come from the Promoted Companies engaged in the activities mentioned above.

The investments shall be made in mature projects; that is, at no time over 25% of the accounting value of the assets will be invested in assets deemed new tangible assets or with a maturing period of less than 12 months. The Fibra E shall disburse at least once a year 95% of its annually determined tax result.

c. CKD's (Development Capital Certificates)

Certificates of Capital Development ("CKDs") are funds created through a Mexican trust structured to receive money from public investors through a public offering of trust certificates, whose income will be invested in certain projects whose characteristics are provided in the issuance documents. The CKDs were created mainly to offer an alternative of investment to the Mexican pension funds or Retirement Funds Administrators ("Afores").

CKDs mainly seek to (i) finance infrastructure and real estate projects; and/or (ii) make private equity investments; provided these investments are performed in Mexican companies. All investments made through CKDs are subject to the eligibility criteria stipulated in the CKD documents.

The yield value or returns on the investments depends on the underlying assets of the trust that issues the CKDs. The return comes from the profit of each project financed by the issuance of CKDs.

The information reporting and disclosure obligations of the CKDs are similar to those of any company listed on the stock exchange. These obligations include the filing of annual reports, audited financial statements and relevant information that could determine any investor's decision-making concerning his investment in the securities issued.

d. CERPI's (Investment Project Certificates)

Investment Project Certificates ("CERPI's") are funds created through a Mexican trust structured to earn income from qualified institutional investors through a restricted public offering of trust certificates, which are created with the purpose of creating a vehicle similar to the international private equity funds. Their issuance of the certificates may be completed in several public offers in a period of one year from the date of the first issuance.

The CERPI's profit may be invested in certain Mexican or foreign projects or companies, which characteristics are specified in the issuance documents. CERPI's may also issue various series of certificates under the same trust, limiting certain rights to the holders of each series.

As in the CKD's, the yield value or returns depends on the underlying assets of the trust that issues the CERPI's. The returns come from the profit of each project financed by its issuance.

The CERPI's, unlike the CKD's, may invest in international and national projects and companies without need of authorization from the holders' meeting or the technical committee. The purpose of the CERPI's is to speed up investments by giving the manager broader authorities than those of the CKD manager; therefore, to appoint representatives in the technical committee, it must be holder of at least 25% of the CERPI's instead of the 10% established for CKD's.

Likewise, the reporting obligations are different to those of a CKD, since they were created to be agile. There is no obligation to disclose information of the promoted companies or projects representing over 10% of the CERPI's value, although investors may request for information as this will not be public.

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