

*Legal framework of foreign
investment in Mexico*

April 2015



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Regulation of Foreign Investment

General aspects

- In Mexico, Foreign investment may participate in any proportion in the capital of Mexican companies, acquire fixed assets, enter new fields of economic activity or manufacture new product lines, open and operate establishments, and expand or relocate existing establishments, except as otherwise provided in the Foreign Investment Law (“**LIE**”).
- The LIE, determines those activities in which the foreign investment can not participate; the maximum percentages in which the foreign investment can participate in certain activities; and the cases in which a favorable resolution by the National Commission of Foreign Investments (“**CNIE**”) is required for its participation.
- For the purpose of determining the foreign investment percentage in economic activities subject to certain maximum limits of foreign participation, foreign investment indirectly conducted in such activities through the stock of Mexican companies with a majority Mexican investment shall not be taken into account as long as such Mexican companies are not controlled by the foreign investment.



Regulation of Foreign Investment

Limits to foreign investment

- The activities determined by the applicable laws in the following strategic areas are **reserved exclusively for the State**:
 - Exploration and extraction of oil and other hydrocarbons, as provided by the applicable Law;
 - Planning and control of the national electric system, as well as the public services of transmission and distribution of electricity, as provided the respective Law;
 - Generation of nuclear energy;
 - Radioactive minerals;
 - Telegraph;
 - Radiotelegraphy;
 - Postal service;
 - Bank note issuing;
 - Minting of coins;
 - Control, supervision and surveillance of ports, airports and heliports; and
 - Others as expressly provided by applicable legal provisions.



Regulation of Foreign Investment

Limits to foreign investment

- The following economic activities are reserved exclusively to **Mexicans or to Mexican companies with a foreigners exclusion clause** :
 - Domestic land transportation for passengers, tourism and freight, not including messenger or courier services;
 - Development banking institutions, under the terms of the law governing the matter; and
 - Rendering of professional and technical services set forth expressly by applicable legal provisions.

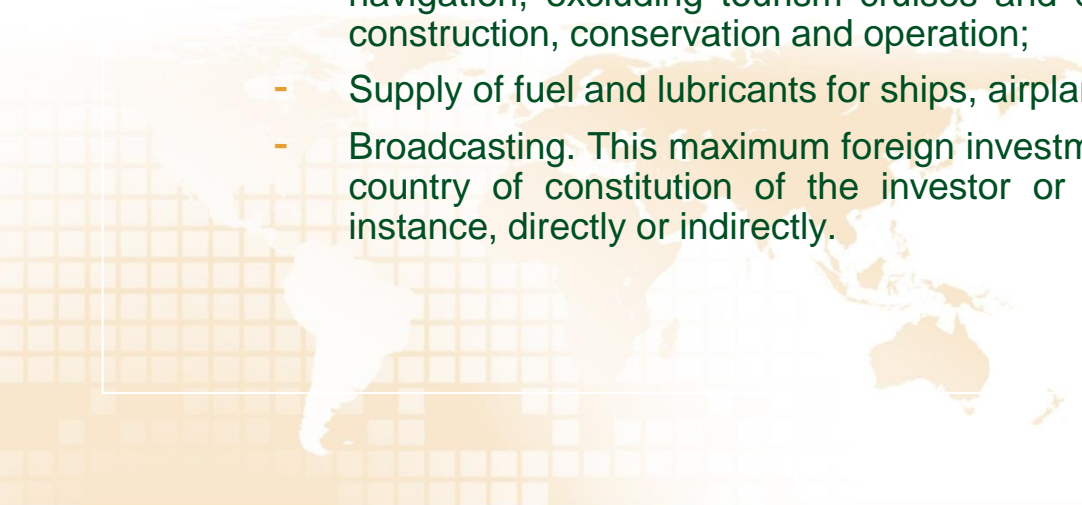
- In the economic activities mentioned hereafter, **foreign investment may participate up to the following percentages**:
 - Up to **10%** in:
 - Cooperative companies of production;
 - Up to **25%** in:
 - Domestic air transportation;
 - Air taxi transportation; and
 - Specialized air transportation



Regulation of Foreign Investment

Limits to foreign investment

- Up to **49%** in:
 - Manufacture and commercialization of explosives, firearms, cartridges, ammunitions and fireworks, not including acquisition and use of explosives for industrial and extraction activities nor the preparation of explosive compounds for use in said activities;
 - Printing and publication of newspapers for circulation solely throughout Mexico;
 - Series “T” shares in companies owning agricultural, ranching, and forestry lands;
 - Fresh water, coastal, and exclusive economic zone fishing not including fisheries;
 - Integral port administration;
 - Port pilot services for inland navigation under the terms of the law governing the matter;
 - Shipping companies engaged in commercial exploitation of ships for inland and coastal navigation, excluding tourism cruises and exploitation of marine dredges and devices for port construction, conservation and operation;
 - Supply of fuel and lubricants for ships, airplanes, and railway equipment; and
 - Broadcasting. This maximum foreign investment will be subject to the reciprocity that exists in the country of constitution of the investor or economic agent who exercise control, in the last instance, directly or indirectly.



Regulation of Foreign Investment

Limits to foreign investment

- In the economic activities referred to hereafter, a **favorable resolution by the CNIE is required** for foreign investment to participate in a percentage higher than 49% :
 - Port services in order to allow ships to conduct inland navigation operation, such as towing, mooring and barging.
 - Shipping companies engaged in the exploitation of ships solely for high-seas traffic;
 - Concessionaire or permissionaire companies of air fields for public service;
 - Private education services of pre-school, elementary, middle school, high school, college or any combination;
 - Legal services; and
 - Construction, operation and exploitation of general railways, and public services of railway transportation.
- According to article 9 of the Foreign Investment Law, a favorable resolution from the Commission is required for foreign investment to participate, directly or indirectly, in a percentage higher than 49% of the capital stock of Mexican companies **when the aggregate value of the assets of such companies at the date of acquisition exceeds the total amount of \$3,601,905,682.86 pesos** (approx. 245 millions of dollars).



Regulation of Foreign Investment

Acquisition of real estate

- Likewise, there are certain restrictions for the acquisition of real estate by foreign individuals or foreign entities, as indicated below.

	Mexican companies with foreigners' admission clause	Foreign natural or legal persons
Direct acquisition of real estate outside the restricted zone*	Yes	Yes, provided they execute an agreement with the Secretary of Foreign Affairs by which they agree to be considered as Mexicans in respect of their ownership interests and not to invoke the protection of their national governments (in terms of article 27 of the Constitution) and obtain the corresponding permit;
Direct acquisition of real estate within the restricted zone*	Yes, if the property has non-residential puposes, by giving notice of the acquisition to the SRE. In case that the real estate has residential purposes it can only be acquired through a trust.	No; it is necessary the figure of the trust.

(* Restricted Zone: The Mexican Constitution in its article 27, section I, prevents any foreigner from directly owning real estate that is located within 50 kilometres of Mexico's coasts and within 100 kilometres of the country's international borders.)



Regulation of Foreign Investment

Real estate trust within the restricted zone

- In case that the trust is required for the acquisition of a property by a foreigner, the credit institution that, acting as the trustee of the real estate trust, holds the ownership rights of the property located within the restricted zone, must obtain a permit from the Secretary of Foreign Affairs (“**SRE**”).
- The use and development of real estate located within the restricted zone held in the trust, shall be understood as the rights for the use or enjoyment thereof, including as the case may be, the obtainment of fruits and products and, in general, any revenue resulting from profit operation and exploitation through third parties or through the trustee (Articles 11 and 12 LIE).
- The duration of the trusts referred herein, shall be a maximum of fifty years, which may be renewed on request by the interested party (Article 13 LIE).



Regulation of Foreign Investment

Neutral investment

- According to the LIE, Neutral Investment, is the investment made in Mexican companies or in trusts authorized under the Law and shall not be taken into account for determining the percentage of foreign investment in the capital stock of Mexican companies.
- In any case, authorization from the Secretary of Economy (“**SE**”) is required, having a maximum period of thirty-five business days from the day immediately following application to grant or deny the authorization. Upon the lapsing of the aforesaid period without any resolution forthcoming, the application shall be deemed to have been granted.



Regulation of Foreign Investment

Foreign entities

■ Representative office

- As a general rule, authorization from the Secretary of Economy is necessary for the establishment of a representative office in Mexico.
- The representative office is limited to perform activities of coordination, collaboration, promotion, and others related to connect its foreign company with its local clients. The RO must not perform commercial activities.
- It shall obtain a Tax Identification Number before the Ministry of Finance and Public Credit to comply with certain tax obligations such as paying the payroll tax and social security quotas of its employees.

■ Branch

- Offices through which the foreign company carries out businesses or commercial activities in Mexico.
- The branch does not have legal personality independent of that of the head office, therefore, is deemed as an extension of the foreign company in Mexico.
- An authorization from the Secretary of Economy is required in order to establish a Mexican branch.
- Given that the branch performs commercial activities in Mexico, for tax purposes it is considered as a permanent establishment in the country; therefore, the branch has the obligation to obtain a Tax Identification Number before the Ministry of Finance and Public Credit and to fulfill with other tax obligations.
- The activities performed by the branch in Mexico are regulated by the Mexican laws.



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Stimulus to the Foreign Investment

International treaties

- Mexico has entered into commercial treaties in three continents, thus it is as an entrance gate to the potential market of more than one billion consumers and 60% of the global GDP.
- Mexico has a network of 10 free trade agreements with 45 countries, 30 agreements for the reciprocal promotion and protection of the investments and 9 agreements of limited scope (Economic Complementation Agreements and Partial Scope Agreements) in the framework of the Latin American Integration Association (ALADI).
- In addition, Mexico actively participates in multilateral and regional organizations and forums as the World Trade Organization (WTO), the Asia Pacific Economic Cooperation (APEC), the Organization for Economic Cooperation and Development (OECD) and the ALADI.



Stimulus to the Foreign Investment

Incentive programs for Foreign Investment

- Mexico has various programs in different sectors with the main objective of stimulating the foreign investment in the country. The most important are the following:
- **Incentive programs for foreign investment:**
 - Refund of importation taxes to exporters (DRAWBAK): It provides the option to obtain the Refund of the General Tax paid for goods that are used as components to manufacture products for its subsequent exportation.
 - IMMEX Maquiladora Export Program (IMMEX): This Program allows IMMEX Companies to temporarily import goods necessary in the industrial process or service destined to the processing, assemble, repair or manufacture of foreign goods for its subsequent exportation, without paying the Importation General Tax, the VAT and, in some cases other countervailing duties.
 - Sectorial Development Programs (PROSEC): These programs are an instrument aimed to entities, dedicated to the production of certain goods, by means of which they are permitted to import with a preferential tariff (Importation General Tax) several goods to be used in the production of specific products, regardless of whether the goods to be produced are destined to exportation or to remain in the national market.
 - New Scheme of Certificated Companies (NEEC): This program has the main objective of strengthening the security of foreign trade's logistical chain through the implementation of minimum security standards internationally recognized; in coordination with the private sector, and providing benefits to the participating companies.



Stimulus to Foreign Investment

Investment Incentives

■ Tax incentive programs:

- Immediate deduction: A deduction applied to encourage the investment in the country, except in the metropolitan areas and those under the influence of the Federal District (Mexico City), Monterrey and Guadalajara. However, this deduction will be applied to those projects that require an intensive manpower; that are no contaminant; and that do not require an excessive use of water.
- Federal tax incentives for companies that do not have permanent establishment in Mexico: For the eligible maquiladora companies (now IMMEX) under certain conditions, an important reduction of the payment of income tax is provided.
- Tax credits for federal tax in I+D: The eligible companies can receive a fiscal credit (and/or a credit in the tax) of 30% of the total cost of activities of Investigation and Development (I+D), including processes and design.

■ Programs of technological development Programas and innovation:

- Stimulus Programs for the Innovation: These are support programs for companies investing in projects of investigation, technological development and innovation aimed to the development of new products, processes or services.
- International Fund: International Cooperation Fund for the development of the scientific and technological investigation between Mexico and the European Union that supports projects under the following modalities: Joint investigation projects and creation and strengthening of investigation networks.



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Labor Aspects

Main modalities of the labor relationships in Mexico

- The labor rights of the employees at the service of the private initiative are listed in article 123 paragraph “A” of the Mexican Constitution, as well as in the Federal Labor Law (“LFT”), which regulates all the aspects of labor relationships in Mexico.
- **Main types of labor contracts in Mexico:**
 - Undetermined time period Contract. Is permanent and for an undetermined period of time. It may be terminated without compensation in the case of a justified dismissal. The following modalities can be identified:
 - Trial period: 30 days, (extendable up to 180 in case of workers for positions of administration or management), with the purpose of verifying if the worker satisfies the requirements and knowledge necessary to perform the labors. If the employee proves to fulfill the abovementioned, he will be hired for an undetermined time period. Otherwise, the labor relationship may be terminated without responsibility for the employer, who is only obligated to pay the worker the corresponding severance package.
 - Initial training: maximum duration of three months (extendable up to 6 months in case of workers for positions of administration or management), by virtue of which a worker is obligated to render his subordinate services, under the direction and command of the employer, for the purpose of acquiring the knowledge or abilities necessary for the activity for which he is going to be contracted. At the end of the initial training, if the employee proves to fulfill the abovementioned, he will be hired for an undetermined time period. Otherwise, the labor relationship will be terminated, without responsibility for the employer.
 - Contract for a determined time period or for a specific work. This type of contract shall be concluded only when the nature of the job requires it, which must be proved. The contract will be terminated once the specific job or work is completed.
 - Season contract: The employees are hired for a season when the activities to be performed have a discontinuous character and periodic labors. The valid time period of those periods will be computed for the purposes of the calculation of seniority.



Labor Aspects

Outsourcing

- Outsourcing regulation from the 2012 Labor Reform
 - Work under the regimen of sub-contracting is that by means of which an employer named as contractor performs works or renders services with his workers under his subordination, in favor of a contracting party, whether individual or company, which sets the tasks of the contractor and supervises him in the performance of the services or the execution of the contracted works.
 - **The regime of sub-contracting or outsourcing shall comply with the following conditions:**
 - It cannot span all of the equal or similar activities completely, that are carried out in the work;
 - It must be justified by its specialized character;
 - It cannot cover tasks equal or similar to those that are performed by the rest of the workers in the service of the contracting party;
 - The contract shall be in writing and the contractor must be registered before the Mexican Institute of Social Security, up to date with his social security, health and other obligations;
 - No transfer of employees may occur with the purpose of avoiding the fulfillment of the employers with their labor obligations.
 - **Failure to comply with the aforementioned, could make the contractor liable for the labor obligations of the contracting party employees' as if he was their employer.**



Labor Aspects

Recruitment costs

- In Mexico there are not any recruitment costs, however, an **employer should bear in mind the following obligations during the labor relationship:**
 - Salary (the payment of wages shall take place in a period no longer than 1 week for material works of 15 days for the rest of the employees).
 - Vacations (at least 6 days for the first working year, 8 days for the second, 10 days for the third, 12 days for the fourth, 14 for the fifth to the ninth, and then successively increasing 2 days for every 5 years).
 - Vacation bonus (25% over the corresponding salaries during the vacation period).
 - Bonus (15 days of salary each year, payable no later than December 20, of every year).
 - Holidays (approximately 8 days each year). Double payment if the employee works in mandatory holiday.
 - Employer-employee contributions that are filed before the Mexican Institute of Social Security (“**IMSS**”), its determination depends on the salary of the employee.
 - Contributions to the Retirement Savings System (“**SAR**”) and to the National Workers Housing Fund Institute (“**INFONAVIT**”).
 - Payroll tax (3% in the Federal District).
 - Retention of Income Tax there are different tariffs that can not exceed 35%.
 - At the same time, the employer is obligated to register each employee at the IMSS and, in some cases, also in treasury.



Labor Aspects

Recruitment costs

■ Minimum benefits of every employee

- Minimum salary. For the minimum salary, the country is divided into 2 geographic areas: “A” \$70.10 pesos daily (includes, among others, Mexico City and various frontier cities with USA) and “B” \$68.28 pesos daily. At the same time, there are also professional minimum salaries that depend on each profession and range from \$88 pesos daily to \$210 pesos daily. Notwithstanding the foregoing, in cities such as the Federal District in practice, workers earn at least \$6,000 pesos each month and workers who perform more qualified works, the amount determined by the market according to the experience and degree of specialization.
- Maximum working hours and extra hours. (a) The day shift is understood to be the time period between 6 a.m. and 8 p.m.; 48 hours each week; (b) The night shift is understood to be between 8 p.m. and 6 a.m.; 42 hours each week and (c) Mixed shift (no more than 3 ½ hours of the night shift): 45 hours each week. The extraordinary hours or overtime (working hours that exceed the shift) will be paid in the following way: (i) for the first 9 extra hours each week: 200% of the salary that corresponds to that shift; and (ii) hours exceeding the abovementioned, 300% of the salary corresponding to the hours of the shift. The employees are not obligated to provide services for more than 9 extraordinary hours each week.
- Weekly rest days. The right to at least one day of rest every week (Sunday is the legally preferred day of rest), with entire salary payment. Those employees that work on Sundays will have the right to an additional bonus of 25% of the salary that corresponds to such day.
- Vacations. The employees will have at least the right to the following paid vacations: for 1 worked year, to 6 working days; for 2 years, 8 working days; for 3 years, 10 working days; for 4 years, 12 working day; for 5 to 9 years, to 14 working days and for 10 years or more, 2 additional working days are increased for every 5 completed years of services.
- Vacation bonus. Right to a bonus no less than 25% of the corresponding salaries during the period of vacations.



Labor Aspects

Recruitment costs

- Bonus. Right to the payment of an annual bonus equivalent to 15 days of salary; the bonus shall be paid before December 20 of every year.
- Profit sharing (PTU). The employees have the right to receive proportionally the equivalent to the 10% of the annual taxable profit (before tax) of the business after the first year of operation of the company. The profits to be shared will be divided into two equal parts: the first part will be equally divided between all the workers, taking into consideration number of days worked by each one in the year, independently from the amount of their wages. The second part will be divided proportionate to the amount of the wages earned for the work performed during the year. The directors, administrators and general managers of the company do not have the right to PTU.
- Training. Obligation of the employers to provide training to the employees.
- Maternity and paternity leave. The working mothers have right to a rest of 6 weeks before and 6 weeks after the birth with payment of salary, or in case of adoption, to 6 weeks with payment of salary after the day of the adoption. The working fathers have right to 5 days with payment of salary for birth or adoption of a child.
- Social Security. All the employees have right to be registered before the IMSS and is mandatory for the employers to comply with such registration. Such Institute will provide the medical and hospital services, as well as the pensions for old age, widowhood and unemployment in advanced age.
- National Workers Housing Fund Institute. All the employees have right to be registered before the INFONAVIT. Every employer is obligated to complete such registration. The INFONAVIT will provide the workers with preferenced credits for the acquisition of a house.



Labor Aspects

Costs of dismissal

- When the labor relationship is terminated for a legal cause, the employer is only obligated to pay the employee the proportional part of his vacations, vacation bonus, bonus, as well as the seniority bonus (12 days of salary for each year of services, stalled to the double of the valid minimum salary).
- When the labor relation is terminated without legal cause (unjustified dismissal), the employer shall pay the following concepts:
 - Proportional part of the vacations, vacation bonus, bonus, as well as the seniority bonus (12 days of salary for each year of services, stalled to the double of the valid minimum salary).
 - 3 months of salary, at the rate of which corresponds to the date when the payment is made.
 - 20 days of salary for each of year of service (if the employee requests his reinstatement and the employer rejects it).
 - In case that the employee has sued the employer and won the corresponding trial, the payment for the back wages, accrued from the date of the dismissal up to a period of twelve months. If by the end of the 12 months, the labor proceeding has not concluded or the award by the Board of Conciliation and Arbitration has not been complied, the employee will also pay the interests generated over the amount of 15 months of salary (the 3 months of salary to which he has right plus the 12 months of the back wages), at the rate of 2% per month, capitalizable at the moment of the payment.
- It is important to mention that in labor trials the burden of proof is placed on the employer.



Environmental Aspects

Environmental Regulation

- Companies in Mexico shall observe the legal environmental regulations, which exist at the federal, state and municipal level.
- According to the Political Constitution of the United Mexican States, the Congress is the competent authority to *“enact laws establishing the concurrence of the Federal Government, the states and the local councils, within their respective jurisdictions, on matters concerning protection of the environment, as well as preservation and restoration of ecological balance” (Article 73).*
- Meanwhile, Article 124 of the Constitution establishes that the powers not expressly granted by this Constitution to federal officials, shall be understood to be reserved to the states.



Environmental Aspects

Federal Legislation

- At the Federal level, the following laws regarding environmental matters are highlighted:
 - General Law of Ecological Balance and Environmental Protection (“**LGEEPA**”), whose objectives, among others, are:
 - To define the principles of the environmental policy and the instruments for its application;
 - The conservation, restoration and improvement of the environment and the biodiversity;
 - The prevention and control of the contamination of the air, water and soil; and,
 - Guarantee conservation and restoration of the ecologic balance, as well as the environmental protection.

At the same time, the LGEEPA sets forth that the Secretary of the Environment and Natural Resources shall issue Mexican official rules regarding environmental matters, in order to guarantee the viability of the economic activities, and the sustainable exploitation of the nature resources.

- Law on National Waters
 - This law is a regulation of the article 27 of the Mexican Constitution, which governs the national waters (either superficial or underground) and the territorial seas, in the extension and terms provided by International Law, among other matters.



Environmental Aspects

Federal Legislation

■ Federal Law of Environmental Responsibility

- It regulates the responsibility derived from damage caused to the environment, as well as its reparation and compensation according to the judiciary or administrative proceedings, alternative resolution mechanisms, and environmental crimes proceedings.
- This law is applicable to all individuals or legal entities whose actions or omissions, either directly or indirectly, caused an environmental damage.
- Who is responsible shall repair the damage, or if possible, cover the environmental compensation that is determined according to the aforementioned Law. At the same time, the responsible shall carry out the necessary actions to avoid the increase of the environmental damage caused.

■ General Law for Sustainable Forest Development

- The objective of this law is to regulate and promote the conservation, protection, restoration, production, ordination, cultivation, use and exploitation of the country's forestall ecosystems and resources.



Environmental Aspects

Competent Authorities

- Main competent authorities regarding environment affairs:
 - Secretary of Environment and Natural Resources (“**SEMARNAT**”)
 - The SEMARNAT is the dependence of government whose fundamental purpose is to promote the protection, restoration and conservation of the ecosystems and natural resources, as well as environmental goods and services, in order to guarantee its sustainable exploitation and development.
 - Federal Bureau of Environmental Protection (“**PROFEPA**”)
 - The PROFEPA is an administrative body with technical and operative autonomy, which reports to the SEMARNAT. Its main function is to supervise the enforcement of the environmental regulations, in order to contribute to the sustainable development.
 - The PROFEPA also coordinates the attention of environmental contingencies and emergencies.
 - National Water Commission (“**CONAGUA**”)
 - The CONAGUA is an administrative body under the authority of the SEMARNAT, whose objective is to function as the technical, normative and consultative body of the Federation regarding the integrated management of the hydrological resources, including the administration, regulation, control and protection of the public water system.



Antitrust, Competition and Economic Regulation

General regulation on competition

- The Mexican Constitution, in its article 28, prohibits monopolies, monopolistic practices, watertights (estancos) and the tax exemptions in the terms and conditions that the laws stipulate. It also prohibits the guise of protection to industry.
- In this sense, the Mexican state regulates the competition through the Federal Law on Economic Competition; applicable to all the areas of the economic activity in Mexico, and it is enforced through the Federal Economic Competition Commission (“**COFECE**”).
 - Federal Law on Economic Competition
 - The objective of this law is to promote, protect and guarantee the free participation and the economic competition, as well as to prevent, investigate, combat, punish and eliminate monopolies, the monopolistic practices, the illicit concentrations, the barriers to the free participation and the economic competition, and others that affect the efficient operation of the markets.
 - The Federal Law of Economic Competition was published on May 23, 2014 and came into force this same year which contained new authorities of the COFECE regarding antitrust and converted the COFECE into an autonomous agency.



Antitrust

Authorities of the COFECE

- The main authorities of the COFECE are:
 - To guarantee the free participation and economic competition; to prevent, investigate and combat monopolies, monopolistic practices, concentrations and other restrictions to the efficient operation of the markets;
 - To impose penalties derived from prohibited conducts regarding competition;
 - To arrange measures to eliminate the barriers on competition and the free participation;
 - To practice visits of verification;
 - To formulate complaints and actions before the Public Ministry with regard to the probable criminal conducts in matters of free participation and economic competition with awareness;
 - To resolve competition matters and to penalize administratively the violation of the Law;
 - To resolve competition conditions, effective competition, existence of fundamental power in the related market or other related matters within its competence; and,
 - To issue Regulatory Provisions on matter of: (i) Imposition of Penalties; (ii) Monopolistic practices; (iii) Determination of fundamental power for one or various Economic Agents; (iv) Determination of relevant markets; (v) Barriers to the competition and to the free participation; (vi) Essential supplies; and (vii) Stripping of assets, rights, company partners or shares of the Economic Agents.



Economic Competition

Anticompetitive Conducts

- According to the Law, monopolies are prohibited, as well as, monopolistic practices, illicit concentrations and the barriers that, in terms of the law, reduce, damage, block or condition in any way the free participation or the economic competition.
- Specifically, the followings are classified as Anticompetitive conducts, in terms of the Law: (i) absolute monopolistic practices, which are null and void; (ii) monopolistic practices defined as illicit according to the Law; (iii) barriers to the free participation and economic competition with anticompetitive effects; and, (iv) concentrations when they are considered as illicit (that is to say, in terms of the Law, when the objective or effect is to obstruct, reduce, damage or block the free participation or the economic competition).
- The investigation of the COFECE on some of the issues mentioned before will start ex officio, or upon request of the Federal Executive branch, through itself or the Economic Secretary, the Attorney's Office and will be performed by the Investigating Authority (the COFECE).



Anti-corruption

General regulation

- In matter of Anti-corruption, Mexico has signed and ratified the following three international treaties:
 - Inter-American Convention against Corruption of the Organization of American States.
 - OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
 - United Nations Convention against Corruption (Merida Convention).
- Regarding the domestic legislation, there are various Mexican laws related to the anti corruption:
 - Federal Criminal Code
 - Federal Law on Administrative Responsibilities of Public Servants
 - Federal Law on Transparency and Access to Public Information
 - Public Works and Related Services Law
 - Federal Law against Organized Crime
 - Federal Law Against Corruption in Public Procurement.



Anti-corruption

Crimes related to the corruption

■ Corruption Crime (Bribery)

- **Bribery crime** is committed by the public servant that by himself, or through other person, receives illegally himself or through others, money or any other gift, or accepts a promise, in order to do or stop something fair or unfair related with his functions.
- Bribery crime is also committed if spontaneously someone gives or offers money or any gift in order that any public servant makes or omits a fair or unfair action related with his functions.
- There is no Mexican law that permits the bribery or payment of facilitation.
- This crime is pursued ex officio.

■ National and Foreign Corruption

- The Mexican Crime Code describes the elements of the law that prohibits **national and foreign** corruption, which is categorized as bribery crime.
- The Crime Code, also penalizes to the one that with purpose to obtain or retain by himself or by other person illegal advantages in the development or conducting of **international commercial transactions**, offers, promises or gives, by himself or intermediary, money or any other gift, whether in goods or services.
- The punishments of bribery also can be imposed to any person that turns to **a foreign public servant** and requires or proposes to carry out the processing or resolution of any matter related with the inherent functions of the employment, position or commission.



Anti-corruption

Crimes related to corruption

■ Individual, Corporate Responsibility Abroad

- Both **natural and legal persons**, can be considered as responsible to bribe an authority or public servant.
- The judge can impose **penalties to whom commits the bribery crime**, of up to 14 years of prison, one thousand days fine (based on the minimum salary) and dismissal and disqualification of up to 14 years to perform another public employment, position or commission.
- In case that it is a **legal person that commits the bribery to foreign public servants**, the judge can impose **up to one thousand days fine** and can decree **its suspension or dissolution**, taking into consideration the degree of awareness of the administration bodies regarding the international transaction and the damage caused or the benefit obtained by the legal person.



Free movement of capitals

Free movement of capitals

- The Mexican legislation does not include the restriction to the free movement of capitals, to and from abroad. At the same time, restrictions of foreign currencies does not applied in Mexico, so both payments and contributions, and repatriations of capital can be made in foreign currency.



Tax Aspects

Income Tax / Tax residence

- The following are considered as residents in Mexico for tax purposes:
 - **Individuals** that have established their residential house in Mexico. In case that they also have a residential house in other country, they will be residents in Mexico for tax purposes if their center of vital interests is in national territory (more than 50% of their income derives from a Mexican source of income).
 - **Legal persons or entities** that have established in Mexico the main administration of the business or the effective management headquarters.
 - Legal persons resident in Mexico for tax purposes are subject to taxation on global income to a corporate tax rate of 30% on taxable income (incomes – deductions).
 - The companies resident abroad for tax purposes are subject to taxation in Mexico for any income derived from a source located in Mexican territory, in accordance with the domestic legislation and the Double Taxation Agreements concluded by Mexico.



Tax Aspects

Taxation in Mexico	
Rate of Income Tax	30%
Rate of Income Tax for Subsidiaries	30%
Rate of Income Tax in Capital Gains	10%/25%/35% defrred tax
Tax Base	Global income
Participation Exemption	No
Tax Losses	
Carryforward	10 years
Carryback	No
Double Taxation	Accreditation/deduction
Tax consolidation	No, now regime of integration
Transfer Pricing Rules	Yes
Thin Capitalization Rules	Yes
Preferential Tax Regimes (REFIPRES)	Yes
Fiscal year	Calendar year
Provisional Income Tax Payments	12 Provisional Payments
Date of Presentation of the Annual Declaration	No later than March 31
Withholding of taxes	Yes
a) Dividends	10% except certain case when arising from the Net Tax Profit Account (CUFIN) 2013
b) Interest payments	4.9% -35%. Up to 40%
c) Royalties	5%/25% /35%. Up to 40%
Profits in cash in goods that come from a permanent establishment	10%
Capital tax	No
Property tax	No
Payroll tax	State Level
Contributions of Social Security	30%
Taxation on Real Estate	State Level 2% -5%
Taxation on Environment	Various
VAT	16%



Tax Aspects

■ Withholding rates for foreign payments

Withholding rates in Mexico	
Dividends	
Rate	Concept
10%	Distributed dividends to individuals or non residents.
Interests	
Rate	Concept
4.9%	Interests paid to foreign Banks registered as Banks in Mexico and resident in a country with Treaty; and interests paid to financial institutions not resident in which the federal government participates in a percentage of the registered capital, with the condition that certain requirements are fulfilled and they are effective beneficiaries of the interest.
4.9%	Interests paid to residents abroad coming from credit located among the large public investor, as well as those located through the banks or stock exchanges in a country with which Mexico has a valid treaty to avoid the double taxation, as long as certain requirements are fulfilled.
10%	Interest paid to residents abroad coming from a credit placed among the public investors, as well as those placed through banks or stock exchanges in a country with which Mexico has a valid Double Taxation Agreement, when the conditions set forth in the previous paragraph are not fulfilled.
15%	Interests paid to reinsurance companies or interests paid as financial lease.
21%	Interests not subject to the rates of 4.9% or 10% and interests paid to non resident suppliers to finance the acquisition of machinery and equipment, which form part of the fixed assets of the purchaser.
40%	Interests paid to a related party located in a tax haven.
35%	In any other case.



Tax Aspects

- Withholding rates for foreign payments

Withholding rates in Mexico	
Canons and Royalties	
Rate	Concept
25%	Payments abroad for technical assistance, know-how, use of models, plans, formulas and similar transfers of technology.
35%	Royalties for the temporary use of patents or certificates of invention or of improvement, trademarks, commercial names as well as advertising.
40%	Royalties paid to related parties resident in countries with preferent tax regimes.
Profits or Remittances of permanent establishments	
Rate	Concept
10%	Dividends or profits distributed by permanent establishments to the parent company or to another permanent establishment.



Tax Aspects

International Treaties / Mexico

- Double Taxation Agreements: Mexico has a strong network of tax treaties (51 Treaties), many of them following the Model Treaty of the OECD. In case of the absence of a Treaty, the domestic regulations are applicable. Mexico also has concluded a lot of wide-ranging agreements of information exchange. In order to invoke the benefits of the Treaties few requirements have to be met.
 - The proof of tax residence or a copy of the last annual declaration which indicated the identity of taxpayer of that country has to be provided to the tax authorities.
 - In addition, other tax requirements shall be fulfilled as presentation of declarations, notices, fiscal judgments, among others.
 - The Mexican tax authorities can require a proof of the legal double taxation in operations among related parties consisting of the affidavit of the legal representative.



Tax Aspects

Permanent Establishment

- According to article 2 of the Income Tax Law (“LISR”) and the article 5 of the Mexico-Spain Double Taxation Agreement, there are three basic assumptions of conformation of a Permanent Establishment (“PE”) in Mexico: (i) through a fixed place of business where business activities are carried out; (ii) through dependent agents authorized to celebrate contracts in representation of the company; and (iii) through independent agents that act out of the ordinary framework of the activities.
- In that regard, the Comments to the Model Convention of the OECD shed light on the conformation of a PE, among others, in the case of electronic commerce specifying the importance of location and disposition of the server as determining factors.



Tax Aspects

VAT / General aspects

- In Mexico the alienation of goods, the provision of services, the giving of temporary use of goods and the importation of goods and services are subject to VAT to the rate of 16%.
- With the tax reform the preferential rate of 11% of VAT was eliminated in the borders.
- The following activities are exempt of the VAT payment: alienation of residential house, books and newspapers, share transfer, used goods, lottery tickets, games of chance and competitions; Mexican or foreign money and gold and silver pieces; and the alienation of goods among non-residents or non-resident and Mexican institutions registered in an authorized program of promotion of exportations.
- The Mexican legislation sets forth an accreditation mechanism (deduction) and VAT balance refund.
- The exportations are taxed at rate of 0%, then balances in favor to be refunded can be generated.
- The legal persons shall present a monthly VAT declaration, through which the VAT generated in the previous month is informed, no later than the 17th of the following month. In addition, the VAT annual declaration and an informative declaration of operations with third parties shall be presented.



Tax Aspects

Special tax on the production of goods and services (IEPS) / General aspects

- This special tax is applicable to certain producers of goods and suppliers of services of various sectors (alcoholic beverages, foods, pesticide, tobacco, among others).
- As a result of the recent tax report that came into force in 2014, this tax is also applicable to non basic foods with high caloric density (275 kilocalories each por 100 grammes, 8%) and flavored drinks with high sugar content (MXP 1 each Litre) , among others.



Tax Aspects

General Importation Tax / General aspects

- In Mexico the following importation taxes are applicable:
 - General Importation Tax, determined according to the number of classification.
 - Customs Tariffs.
 - VAT over the importation (16%)
 - IEPS, in case that the imported product is subject to the payment of such tax.
 - There are two programs that include tax benefits, IMMEX for the maquiladoras and PROSEC for certain products used for manufacturing.



Intellectual Property

General regulation

- Mexico forms part of various international treaties managed by the World Intellectual Property Organization in matter of intellectual property, however, its domestic regulation in this matter is mainly regulated by the Industrial Property Law and its Regulations, and the Federal Law on Copyright.
- The main objective of the Industrial Property is:
 - To establish the base in order that, in the industrial and commercial activities of the country, there is a permanent system of **improvement of processes and products**;
 - To encourage creativity for the design and the presentation of new and useful products;
 - To protect the industrial property through the regulation and granting of **invention patents; registrations of Utility Models, industrial designs, trademarks, and commercial slogans; publication of commercial names; declaration of protection of designations of origin, and regulation of industrial secrets**;
 - To prevent the actions that threaten the industrial property or that form unfair competition related with the same and to establish the penalties and punishments with regard to these actions, and
 - To establish conditions of legal security among the parties in the operation of franchises, as well as to guarantee a treatment not discriminatory for all the franchisee of the same franchisor.
- The legal authority to manage the system of industrial property in Mexico is the Mexican Institute of the Industrial Property (“**IMPI**”), public organization decentralized legal personality and its own budget.



Intellectual Property

General regulation

■ Federal Law on Copyright

- This law is regulation of the constitutional article 28, and its objective is the safeguard and promotion of the cultural heritage of the Nation; as well as the **protection of the copyrights, the performers, as well as the editors, the producers and the organizations of broadcasting, in relation with literary or artistic works** in all the manifestations, interpretations or executions, editions, phonograms or videograms, issuances, as well as the other rights of intellectual property.
- The administrative application corresponds to the Federal Executive under control of the National Institute of Copyright (“**INDAUTOR**”).



Legal framework of foreign investment in Mexico

- Subject 1: Regulation of Foreign Investment
- Subject 2: Stimulus to Foreign Investment
- Subject 3: Regulation in specific areas
 - Labor Aspects
 - Environmental Aspects
 - Anti-trust Aspects
 - Anti-corruption
 - Free movement of capitals
 - Tax
 - Intellectual Property
- **Subject 4: Establishment of a subsidiary**
- Subject 5: Main types of contracts



Establishment of a subsidiary

Main company types

- To establish a Mexican subsidiary, once incorporated, it will have legal personality and own assets (different from those of the parent company), which has the main benefit to armour of responsibility to the parent company, to the extent that in Mexico, as a general rule, neither the legislation or the jurisprudence establish the “piercing the corporate veil” for the allocation of responsibilities in the mercantile companies (S.A. and S. of R.L.), except in case that is very exceptional.
- The types most used of Mexican mercantile companies are the Stock Corporation (Sociedad Anónima or “S.A.”) and the limited liability company (Sociedad de Responsabilidad Limitada or “**S. de R.L.**”), in which the assets and obligations of the shareholders or partners will be independent of those of the company. In this sense, in the case of a subsidiary in Mexico with foreign shareholders, such shareholders can not be demanded obligations of responsibility imputable to the subsidiary.
- There is a modality of stock corporation called Investment Promotion Stock Corporation or “**S.A.P.I.**”, which forms a proper vehicle for the attraction of private capital and of risk or when there are various types of shareholders, due to that this modality gives more rights of minority, has more flexibility for the convention among partners, permits more efficient mechanisms to implement strategies of exit of the private capital (as rights of “*drag along*” and “*tag along*”), does not have obligation to publicate its financial status, permits to impose restrictions to the share transfer and permits to issue different types of shares with different rights, among others.



Establishment of a subsidiary

Main company types

- In general terms, the S. de R.L. and the S.A. have in Mexico the same tax and legal obligations. In this sense, under both modalities:
 - The company can be incorporated by natural and / or legal persons, Mexican and / or foreigners, except for certain bans or restrictions in matters reserved to the foreign investment, which are subject to the specific regulation in Mexico.
 - In Mexico the sole proprietorships are still not permitted, then for the incorporation of any S. de R.L. or S.A. it is required the intervention of no less than two (2) partners / shareholders, when some of them only holds a symbolic participation in the registered capital (for example, MXN \$1 peso).
 - From a perspective of responsibility of the partners / shareholders, both modalities are very similar; in both they take responsibility of the corporate obligations even for the amount of their respective shares / corporate parts in the registered capital of the company.
 - Both can be incorporated under the modality of fixed capital, or of “variable capital” (“C.V.”). In the last case, the articles of association just indicate the minimum fixed registered capital, and then the company can establish without limitation the variable capital of the company, which can be extended or reduced without need to modify the articles of association or proceed the public deed nor later the registration in the Public Registry of Commerce for its validity, with the consequent saving of costs and time.



Establishment of a subsidiary

Main company types

- For their part, the main differences between a S.A. and a S. de R.L. are the followings(1):
 - The minimum Registered Capital will be the one established by its partners / shareholders in the corporate contract; as a general rule in the S. de R.L. a minimum capital of MXN \$3.000 Pesos (approx. 170 €) is established while in the S.A. of MXN \$50.000 Pesos (approx. 2.800€).
 - In the S. de R.L. the capital is divided in corporate parts, and for its incorporation no less than 50% of the capital shall be paid, while in the S.A. it is divided in shares, and for its incorporation, no less than 20% of the subscribed capital shall be paid.
 - In the S. de R.L. the corporate parts can no be objective of public subscription, in addition to the requirement of consent of the assembly of partners for the cession / transfer as well as admission of new partners, while in the S.A. the shares can be objective of public subscription except that the articles of association establish other thing and the shares can be transfered to third parties trthrough simple endorsement.
 - The S. de R.L. can not seek a listing, while the S.A. can.
 - In the S. de R.L. there is only the Assembly of Parters, while in the S.A. there is the Ordinary and Extraordinary Assembly of Shareholders, depending on the matters to be treated.
 - The S.A. is obligated to designate one or more commissioners, temporary and revocable, entrusted with the supervision, while the S. de R.L. is exempt of this obligation.
 - The S.A. has the obligation to publish the final balance of liquidation in the electronic system established by the Secretary of Economy, while the S. de R.L. no.



Establishment of a subsidiary

Main company types

- For their part, the main differences between a S.A. and a S. de R.L. are the followings(2):
 - Different from the S. de R.L., the S.A. can incorporate in its articles of association, among others, stipulations that:
 - Impose restrictions to the transfer of property or rights, with regard to the shares of the same series;
 - Establish grounds of exclusion of partners or to execute rights of separation, retirement, or to amortize shares;
 - Permit the issuance of shares that:
 - Do not confer right of vote or that the vote is restricted to some matters;
 - Grant corporate rights not economic different to the right of vote or exclusively the right of vote;
 - Confer the right of vote or require favorable vote of one or more shareholders, with regard to the resolutions of the general assembly of shareholders.
 - Fix resolution mechanisms in case of corporate disagreement or block (*deadlocks*);
 - Extend, limit or reject the preferent right of subscription; and,
 - Permit to limit the civil responsibility of directors and managers, as long as that they are fraud, bad faith or illegal acts.



Establishment of a subsidiary

Main company types

- For their part, the main differences between a S.A. and a S. de R.L. are the followings(3):
 - Different from the S. de R.L., the shareholders of the S.A. can agree among them:
 - Rights and obligations that establish options of purchase or sale of the company shares (such as *drag along* and *tag along*);
 - Alienations and other legal acts related to the control, disposition or execution of the preference right;
 - Agreements for the execution of the right of vote in assemblies of shareholders;
 - Agreements for the alienation of the shares in public offer; and,
 - Others of analogous nature.

These agreements will not be enforceable to the company, except that it is the judicial decision.



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- **Subject 5: Main types of contracts**



Main types of contracts

Licensing and franchise contracts

- If the objective of the foreign company is to obtain royalties by the use of technology, technical knowledge and / or rights of industrial property in Mexico, it can conclude licensing and franchise contracts.
- The proper protection of the rights of property involved in the contracts (trademarks, patents or others), requires that such contracts are registered before the IMPI.
- At the same time, it is necessary to obtain the patent or register the trademarks or other rights of industrial property in the IMPI.
- The licensors of programs of information technology (*software*) or the title holders of copyright, in order to protect such right can register them before the INDAUTOR.



Main types of contracts

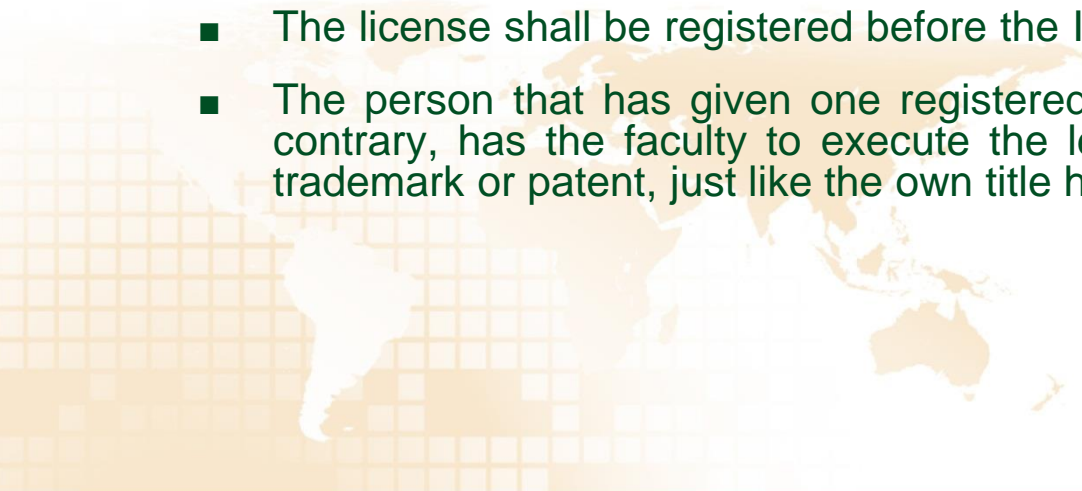
Licensing and franchise contracts

■ Franchise Contract

- Transfer technical knowledge (*know how*) or offer technical assistance with the license of use of one trademark, with written authorization.
- Relevant clauses: territorial delimitation, confidentiality, period, payment of royalties.
- In order to have effects before third parties, it is required to register the contracts in the IMPI.

■ Licensing Contract

- The title holder of a patent or registration can give a license for its exploitation.
- The license shall be registered before the IMPI in order to have effects facing third parties.
- The person that has given one registered license in the IMPI, except stipulation to the contrary, has the faculty to execute the legal actions of protection of the rights on the trademark or patent, just like the own title holder.



Main types of contracts

Sales, leases, services and works for entities of the government

- The main purchaser of goods and services in Mexico is the government.
- The contracts with government entities to sell them goods, to provide services or to carry out works in its favor, are subject to the following federal laws i) Law of Acquisitions, Leases and Services of the Public Sector and ii) Public Works and Related Services Law, or even some state laws, depending on the contracting government entity. PEMEX and CFE have a specific regime of contracting.
- The modalities of contracting are:
 - Public tendering;
 - Invitation to at least three suppliers; and
 - Direct allocation
- The last two modalities are used in exceptional cases such as i) fortuitous case or force majeure that because of the required period it is not possible to make a tendering, ii) existence of only one supplier or contractor of the required goods or labors, iii) contracts of small amount.
- There is an electronic system of government public information on the purchases and contractings of the federal government called “CompraNet”.



Main types of contracts

Sales, leases, services and works for entities of the government

- On the other hand, there are blueprints of Public Private Partnerships (“**APP**”).
- They can be : i) to establish a contracting relation in long term, between the public sector and the private sector, for the provision of services to the public sector or to the final user and in which the provided infrastructure total or partial is used by the private sector with aims to increase the social welfare and the levels of investment in Mexico, or ii) to develop projects of productive investment, investigations applied and / or of technology innovation.
- Under the blueprint of APP, the participants can present to the dependences or competent entities to carry out projects.

