



# The Legal 500 Country Comparative Guides

## Mexico

# INVESTING IN

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This country-specific Q&A provides an overview of investing in laws and regulations applicable in Mexico.

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## MEXICO INVESTING IN



### 1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

Mexico stands among the most welcoming emerging nations for foreign direct investment (“**FDI**”) and is recognized as the world’s ninth-largest FDI recipient. Notably, in 2021, it secured its position as the second-largest FDI recipient in North America, showcasing resilience and attracting significant external capital. UNCTAD’s 2022 World Investment Report highlighted a substantial 13% surge in FDI inflows, reaching USD 31.6 billion, with notable contributions from new equity investments in mining and extractive industries. Greenfield investments experienced a marked increase, particularly in information and communication, exemplified by Huawei’s USD 4.5 billion investment in a cloud data center in Mexico. The estimated total stock of FDI reached a significant USD 578 billion in 2021.

However, despite these achievements, Mexico faced challenges impacting FDI inflows. Uncertainties surrounding the government’s economic agenda, fiscal austerity measures, and a decline in fixed investments affected overall FDI. Persistent concerns regarding the government’s stance on public-private partnerships (PPPs) and the role of the private sector, compounded by the financial challenges of the state-owned oil company Pemex, played a role in hindering investor confidence. Additionally, shifts in the policies of CFE, the state electricity supplier, discouraged private investment in public utilities, resulting in a substantial 67% drop in FDI in electricity generation, transmission, and distribution.

Nevertheless, despite these challenges, recent reports from the Ministry of Economy in 2023 reveal a remarkable upward trajectory in FDI, indicating a 41% increase compared to the previous year’s first half, excluding the impact of specific mergers and restructuring. This surge marks the highest FDI recorded for the same period since 2006, reflecting ongoing investor confidence. Near-shoring phenomenon also

played an important role in these new trends.

However, a closer look at the nature of investments in Mexico between January and June 2023 reveals a different trend. A significant 78% of the captured investment represents reinvestment of company profits, with only 7% attributed to new investments. This contrasts sharply with the first half of 2022, where new investments accounted for 43% of incoming investment, marking the lowest proportion of new FDI observed for a first half since 2014.

In summary, Mexico’s FDI landscape demonstrates resilience and growth despite challenges. While the country continues to attract substantial investments, the shift towards reinvestment over new ventures highlights the need to address underlying concerns to maintain an environment conducive to diverse foreign investments.

### 2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

According to UNCTAD’s World Investment Report 2023 released on 5 July, foreign direct investment (FDI) in Latin America and the Caribbean surged by 51% to reach \$208 billion in 2022, driven by heightened demand for commodities and critical minerals. Mexico, the second-largest recipient in the region, experienced a 12% increase in FDI inflows, totaling \$35 billion, marked by a notable rise in new equity investments and reinvested earnings. Notably, net cross-border mergers and acquisitions (M&As) skyrocketed to \$8.2 billion, a significant leap from less than \$1 billion in 2021, with business acquisitions emerging as the primary form of FDI, followed by stock purchases, signaling an increasing trend in greenfield investments. This surge in FDI in Mexico predominantly gravitates towards the

Manufacturing and Transportation sectors, attributed to the near-shoring phenomenon.

Since 2021, asset acquisitions as a form to buy an on-going business decreased because of tax law changes providing federal taxes joint and several liability to mostly all asset acquisitions where the equipment, type of activity, personnel and/or operating site remain the same as the one of the assets seller, so now a days purchase of equity or stock is the most common alternative to buy an on-going business.

The post-pandemic nearshoring demand to set up operations in Mexico so the supply chain is concentrated in the north American region, also encouraged equity joint ventures, where international companies pursue Mexico partners to expedite the onboarding of the Mexico manufacturing and avoid the time and learning curve in set up from scratch a new company and manufacturing operation.

### **3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?**

Mexico's investment landscape features various sector-specific regulations aimed at preserving national interests and controlling foreign involvement. Certain industries are exclusively reserved for the Mexican State due to their strategic significance, including oil exploration, national energy management, nuclear energy, and telecommunications services, among others. Additionally, specific sectors are reserved solely for Mexican nationals or companies, prohibiting foreign investment, such as development banks and select professional and technical services.

Moreover, a few sectors impose limitations on foreign ownership percentages. For instance, cooperative production companies allow a maximum of 10% foreign ownership, while others, like newspaper publishing, agricultural land ownership, and port administration, may permit up to 49% foreign ownership. In other industry sectors, exceeding the 49% ownership threshold requires Foreign Investment Commission approval, such as port services, educational and legal services, and railway construction and operation.

Now a days mostly of industry activities are open to 100% foreign investment ownership, except for certain few activities, as stated above.

Foreign individuals face restrictions in acquiring real estate within designated "Restricted Zones," situated

along borders and beaches. However, they can do so through trusts managed by Mexican credit institutions, subject to prior notice and Ministry of Foreign Affairs approval. Alternatively, Mexican companies with specific provisions in their by-laws treating foreign investors as nationals can acquire real estate within Restricted Zones for non-residential or mixed-use purposes. These regulations underscore Mexico's cautious approach to foreign investment while aiming to balance national interests and economic development.

### **4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?**

Generally, foreigners are allowed to invest and hold the same stock and other equity securities as domestic shareholders both for public and private companies. As mentioned in 3) above, there are exceptions in certain industry sectors, such as equity ownership in companies owning land used for agriculture, livestock or forestry purposes.

### **5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?**

Domestic businesses are organized by national or foreign shareholders or companies.

As general rule, the management of a company may be entrusted to individuals who can be foreigners or nationals.

### **6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?**

According to the General Law of Commercial Companies (the "Companies Act"), there are six different types of commercial entities which can be incorporated; however, two of them are more commonly used: Limited Liability Company (sociedad de responsabilidad limitada or S. de R.L.) and Corporation (sociedad anónima or S.A.).

- Which form is preferred by domestic shareholders?

The stock corporation (“Sociedad Anónima”). This type of entity comprises shareholders whose liability is limited to their capital contributions. Key features include a minimum capital requirement in the amount set forth in the company bylaws and shares represented as securities certificates with equal value and rights.

- Which form is preferred by foreign investors/shareholders?

Either the stock corporation (“S.A.”) or the limited liability company (“S. de R.L.”); however, when the investor, owner or beneficiary is a US taxpayer, the preferred is the limited liability company because this type of entity is eligible in the USA to check the box for US tax purposes and be treated as foreign partnership. This is, US Tax laws contemplates the possibility to elect the tax classification of certain foreign vehicles. In those cases, a widely adopted strategy is to use the business corporate form of a limited liability company (“S. de R.L.”) and elect to have the same be treated as a foreign pass-through vehicle to allocate corporate income, losses, deductions, and credits directly to its shareholders.

The S. de R.L. is as a partnership where liability is limited to partners’ capital contributions. Key characteristics include partners’ pivotal role in administration, prohibition of work or service contributions, a minimum capital requirement as set forth in the company’s bylaws, and representation of capital through partnership equity quotas. These equity participations are non-tradable without approval from Partners’ Meeting.

- What are the reasons for foreign shareholders preferring one form over the other?

Both the stock corporation and the limited liability company are taxed the same in Mexico and provides corporate liability veil (subject to certain tax exceptions) to its owners. However, because of the reasons explained above, the S. de R.L. de C.V. (Limited Liability Company) is preferred in some cases due to tax considerations.

In dealing with equity joint ventures, using the stock corporation or a sub-type of stock corporation, so called Sociedad Anónima Promotora de Inversión or “SAPI” (stock corporation to foster investment), are the more common to use, as they enable more flexibility to set standard rights and protections and tailor-made governance and ownership economic benefits rules.

## **7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?**

See below

- Which governmental entities have to give approvals?

Any company that is incorporated in Mexico, requires the authorization of the Ministry of Economy to use its corporate name.

Certain activities may require particular approvals, but in general, to form a company no other approvals need to be obtained from governmental entities. However, once the company is incorporated, it should be recorded before the following governmental entities:

- (i) Public Registry of Commerce where its domicile is located;
- (ii) Federal Taxpayer’s Registry;
- (iii) Mexican Social Security Institute;
- (iv) Mexican Immigration Institute (if the company will employ foreign individuals); and
- (v) National Registry of Foreign Investments, when there is direct or indirect foreign investment in the capital stock of the company.

In addition, depending on the activities that the company will perform in Mexico, it might be subject to obtain certain registrations and/or authorizations before other governmental entities (i.e. mining companies shall be recorded before the Mining Registry, maquila companies shall obtain IMMEX program, etc).

- What is the process for forming/incorporating a domestic company? The process to incorporate a domestic company is as follows:

- (i) Determine the form of the entity that the company will have.
- (ii) Choose the corporate name that the company will have. To be approved by the Ministry of Economy.

(iii) If the shareholders are foreigners, powers of attorney from the founding owners/shareholder should be granted in favor of the individuals who will represent them locally in the incorporation process. The powers of attorney can be granted abroad in front of a Notary Public and the signature of the Notary Public should be legalized or apostilled, in this latter case, if the country where the power of attorney is granted is member of the Hague Convention. If the powers of attorney are granted in different language other than Spanish, they should be translated in Mexico by an official translator.

(iv) Identify the controlling beneficiaries of the company.

(v) Draft the bylaws of the company which contain, the following provisions, among others: corporate name, corporate domicile, corporate purpose, minimum capital stock, share value, corporate governance;

(vi) Appear before a Mexican Notary Public to formalize the powers of attorney granted by the shareholders of the company and the bylaws; and

(vii) Record the incorporation deed before the Public Registry of Commerce of the corporate domicile of the company.

- What is a required capitalization for forming/incorporating a company?

The Companies Act (“Ley General de Sociedades Mercantiles”) does not provide for a minimum amount that a company shall have at the time of its incorporation or any time thereafter. However, the shareholders’/partners’ of the company in the bylaws shall freely determine the minimum amount of capital stock that the company shall have. In no event, the capital stock of the company may be less than the minimum amount determined in the bylaws of the company.

- How long does it take to form a domestic company?

Generally, it takes from 2 to 4 weeks.

- How many shareholders is the company required to have?

Corporations and Limited Liability Companies, which are the two types of entities generally used in Mexico, require at least two shareholders/partners.

Notwithstanding the foregoing, it is important to mention that, there is a type of stock, so-called the Simplified Shares Corporation (*Sociedad por Acciones Simplificadas* or SAS), which can be incorporated by a single shareholder; however, it has a number of limitations,

such as a maximum annual revenue threshold and the requirement that only individuals can be shareholders of this type of entity.

- Is the list of shareholders publicly available?

Yes, the name of founding shareholders is publicly available in the Public Registry of Commerce. However, if there is a change in the shareholding structure of the company, a notice shall be published at the electronic system of the Ministry of Economy.

## **8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?**

Generally, no approval or authorization is necessary for foreigners to invest and acquire shares from Mexican private companies. Subject to certain disclosure requirements and to the thresholds mentioned in our previous responses, a direct acquisition from another shareholder would also be permitted under Mexican regulation.

Regarding assets, it is not advisable from a legal and tax perspective and/or efficient for a foreign investor to directly buy assets and conduct business in Mexico. The purchase of assets itself does not trigger an approval requirement, but the ability to actually conduct a business in Mexico as foreigner, may be subject to additional requirements.

In either a stock or asset acquisition, there is a pre-merger control competition law requiring transaction meeting certain thresholds in terms of transaction value, revenue, assets, capital stock, among other factors, to obtain a prior approval from Mexico Competition Commission.

The above, in addition to the acquisition of an over 49% equity ownership in the industries provided in the response to number 3 above.

## **9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?**

No approval or authorization is necessary for foreigners to invest and acquire shares from Mexican public

companies, except as set forth in the answer to Section 8 above, or when the securities offering is limited to domestic national.

### 10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

The Mexican Securities Law (Ley del Mercado de Valores) states that public takeovers bids can be voluntary or mandatory. A tender offer is mandatory when a person or group of persons intend to acquire or attain, by any means, directly or indirectly, the ownership of 30% or more of the common shares of a public company. The Mexican Securities Law also states that the tender offer shall be made **(i)** for the percentage of the capital stock equivalent to the ordinary shares that are intended to be acquired or for 10% of the share capital, whichever is greater, provided that the offeror limits its final holdings to a percentage that does not imply obtaining control of the company or **(ii)** for one hundred percent of the capital stock, when the offeror wishes to obtain control of the corresponding company.

### 11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

The approval process for building a new facility in Mexico will vary depending on the specific location where the same will be located, the type of project (greenfield or brownfield), and the type of industry for which the facility will be constructed. Below is a general overview of the key steps involved:

**1. Zoning:** The first step will be to make sure that the project is feasible to be conducted within the zone where the target property is located. This needs to be assessed and confirmed in accordance and in compliance with local zoning regulations. Once this is confirmed, it is necessary for the company to obtain from the municipal urban development authority a license for the proposed land use.

**2. Environmental Impact Assessment (EIA):** An EIA is important to evaluate the environmental impact of the project from an environmental perspective. This assessment is crucial for obtaining environmental permits, not just for the construction but also for the operation of the facility.

**3. Permitting Process:** Depending on each jurisdiction, it is necessary to obtain different authorizations, licenses

and permits from municipal, state, and/or federal authorities. The most typical permits that generally must be obtained from a real estate perspective are the following (most from a municipal level):

- i. Land Use License.
- ii. Construction Permit.
- iii. Construction Termination Certificate.
- iv. Recording of the construction in cadastral files.

For the case of a Brownfield Project, which involves redeveloping an existing facility or site, the approval process is fairly the same as for a greenfield, however, there are some additional key aspects which must be taken into consideration:

**1. Site Assessment:** Conduct a thorough assessment of the existing site to identify any environmental contamination or contingencies. If contamination is found, it is required to conduct a remediation process to meet environmental standards. This may involve cleanup activities and obtaining environmental clearances.

**2. Permitting:** Obtain necessary permits for the demolishing and redevelopment, including construction permits and environmental permits.

**12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of**

**employees?**

Investors can conduct transactions in Mexico in both foreign currencies and domestic currency; however, foreign currency is not considered legal tender, except in cases explicitly determined by law. Tax obligations must be recognized and determined in Mexican pesos considering the exchange rate at which the foreign currency has been acquired or, in the absence of such acquisition, the exchange rate published by the Central Bank (Banco de México) in the Federal Official Gazette (Diario Oficial de la Federación) on the day prior to the day on which the taxes are incurred. On days in which the Central Bank does not publish such exchange rate, the last exchange rate published prior to the day on which the taxes are incurred will be applied.

• Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay:

- in an acquisition, or
- to pay to contractors, or
- to pay salaries of employees?

No, but please consider that tax obligations must be recognized and determined in Mexican pesos considering the exchange rate at which the foreign currency has been acquired or, in the absence of such acquisition, the exchange rate published by the Central Bank (Banco de México) in the Federal Official Gazette (Diario Oficial de la Federación) on the day prior to the day on which the taxes are incurred. On days in which the Central Bank does not publish such exchange rate, the last exchange rate published prior to the day on which the taxes are incurred will be applied.

According to Federal Labor Law, the salaries can be agreed in a foreign currency but must be paid in pesos considering the applicable exchange rate at the date of payment.

• Is there a limit on the amount of foreign currency in any transaction or series of related transactions?

No. There is not.

• Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?

No. There is not.

• Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?

No. There is not.

• Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Investors can conduct transactions in Mexico in foreign currencies and in the domestic currency; however, foreign currency is not considered legal tender, except in cases explicitly determined by law. Tax obligations must be recognized and determined in Mexican pesos considering the exchange rate at which the foreign currency has been acquired or, in the absence of such acquisition, the exchange rate published by the Central Bank (Banco de México) in the Federal Official Gazette (Diario Oficial de la Federación) on the day prior to the day on which the taxes are incurred.

**13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?**

N/A

N/A

N/A

Broadly speaking, there are no restrictions for transferring domestic currency or foreign currency out of the country.

Nonetheless, it is worth noting that those transfers made by a Mexican branch with a permanent establishment in Mexico to its head office or to any of its establishments abroad, may be treated as a dividend distribution. For those purposes, the branch must keep a Net After Tax Profits Account ("CUFIN" as per its Spanish acronym), which records and measures the undistributed after-tax corporate profits generated by the branch in Mexico throughout the years. When corporate profits have not been subject to the corporate income tax, distributed dividends are subject to an "equalization tax" imposed on the branch to anticipate the payment of the corporate income tax by applying a 30% tax on the resulting amount from grossing-up the dividend effectively paid by a factor 1.4286. Any tax so paid by the branch should

be credited against the income tax for the corresponding tax year.

Given dividends are considered Mexican sourced income, such dividend would be subject to tax in Mexico at an additional 10% tax on the gross amount paid. Such dividend tax may be reduced by an applicable tax treaty depending on the tax residence of the distributing entity's shareholder.

#### 14. Is there a tax or duty on foreign currency conversion?

There is no specific tax or duty applied directly to foreign currency conversion. However, Mexican tax residents engaging in foreign currency transactions are subject to recognize a taxable income from the foreign exchange gain or a deduction from foreign exchange losses, at accrual basis.

#### 15. Is there a tax or duty on bringing foreign or domestic currency into the country?

There is no specific tax or duties on individuals bringing foreign currency into the country.

#### 16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

The asset and share acquisitions have very different consequences from a tax perspective. Below a chart with a brief description of the main differences in the context of an acquisition:

Differences	Shares acquisition	Assets acquisition
Tax liabilities	Acquired company is tax accountable with all its assets for any tax deficiency for the last five fiscal years.	Joint and several liability in the acquisition of an ongoing business. This liability is limited to the purchase price paid for the assets. This risk may be mitigated
Income tax	Subject to tax on the capital gain (net income). Non-Mexican tax residents are subject to tax from transferring shares or equivalent interest in a Mexican entity. The tax is determined alternatively by applying (a) 25% tax on the gross income or (b) 35% on the capital gain. This last alternative is subject to comply with several requirements, among other audit for tax purpose the transaction and appoint a legal representative in Mexico. Tax Convention may provide relief or a reduced tax rate. The price paid by purchaser may be consider as a cost basis for any further transfer of the shares.	Seller is subject to tax on the capital gain (net income). Non-Mexican residents will be only subject to tax on certain assets (i.e., real estate, intellectual property, among others). Purchaser may take a carry-forward deduction considering the tax depreciation rate. No deduction with respect to goodwill is recognized.
Value added tax	NA	Depending on the specific asset may be subject to a 16% VAT on the value. In certain cases, may apply a Goods and Services Excise Tax on inventories (i.e., beer, wine, spirits, cigarettes, gasoline, sodas and soft drinks, junk food, etc.)
Transfer real estate tax	NA	Transfer real estate tax applies depending on the municipality where the property is located.

Bear in mind that reporting obligations and mandatory disclosure rules may apply in both scenarios.

#### 17. When is a stamp duty required to be paid?

Broadly speaking there are Municipality real estate transfer taxes and registry duties, but there are no stamp duties in Mexico.



**18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?**

The capital stock of Corporations is represented by shares that can be freely transferred through endorsement, unless otherwise is specified in the bylaws. In addition, shareholders will not have a right of first refusal unless it is specifically provided for in the bylaws.

The capital stock of Limited Liability Companies is represented by equity quotas, which can only be transferred with the approval of the partners of the company. In addition, the partners of the company have the right of first refusal to acquire equity quotas.

- Can the shares be held outside of the home jurisdiction?

Share certificates or equity quotas which represent the capital stock of a company can be held outside of the home jurisdiction.

- What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

The general rule is that no approval or authorization is required for a foreign investor to transfer shares to another foreign or domestic shareholder. Notwithstanding the foregoing, it is important to mention that, depending on the activity that a company performs in Mexico, certain authorizations or notices should be obtained/granted in the event a share is transferred (e.g. entities engaged in the energy sector that have permits issued by Mexican Energy authorities).

- Are changes in shareholding publicly reported or publicly available?

Changes in the shareholding structure of a company are published in the electronic system of the Ministry of Economy (PSM), however, depending on how the notice is submitted, changes in the shareholding can be publicly available.

**19. Is there a mandatory FDI filing? With which agency is it required to be made?**

**How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?**

- With which agency is it required to be made?

The required filings must be made before the Foreign Investments National Commission (*Comisión Nacional de Inversiones Extranjeras*) and the National Registry of Foreign Investments (*Registro Nacional de Inversiones Extranjeras*) both belonging to the Ministry of Economy. Additionally, in certain real state issues, it may be necessary to make a filing before the Ministry of Foreign Affairs

- How long does it take to obtain an FDI approval?

When FDI approval is necessary, The Foreign Investments National Commission should resolve in maximum 45 days or, in the event that no response is received within that period, the application shall be deemed approved. Regarding the Ministry of Foreign Affairs the answer can take between 5 to 40 business days to resolve, depending on the specific case.

Under what circumstances is the mandatory FDI filing required to be made? Mexico embraces the principle of being open to foreign investment. Mexico welcomes foreign investments in various sectors, maintaining minimal restrictions.

However, as mentioned before, there are specific sectors exclusively reserved for the Mexican State due to their strategic importance or have restrictions on the percentage of foreign investment.

Moreover, any company that is incorporated in Mexico or having foreign investment after its incorporation must register in the National Registry of Foreign Investments, for statistics purposes, within 40 business days after the

entry of the Foreign Investment in Mexico.

- If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

If a mandatory filing is not required, the government authority cannot block the transaction as provided under the Foreign Investment Law and regulations. However, Mexico has merger control provisions under the Federal Economic Competition Law, therefore, the involved parties would be bound to obtain prior authorization from the Federal Anti-trust Commission when certain thresholds are met.

- If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction, could such a transaction trigger a mandatory FDI filing in your jurisdiction?

No. Under the Foreign Investment Law and regulations, the transaction outside the home jurisdiction could not be blocked and would not trigger any mandatory FDI filings. It is important to note, however, under the Federal Economic Competition Law if certain economic thresholds are met in Mexico by a transaction, prior authorization from the Federal Competition Commission could be required.

- Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

Under the Foreign Investment law and regulations, the Mexican authorities could not prohibit the indirect transfer of control of the subsidiary. However, regarding Antitrust provisions the Federal Antitrust Commission may have the authority to block a merger and/or any direct or indirect transaction involving a Mexican entity if the thresholds under the Federal Economic Competition Law are met.

## 20. What are typical exit transactions for foreign companies?

In Mexico, we can find several options for exit transactions for foreign companies, as (i) the Equity Holders' right of withdrawal in certain circumstances under the applicable bylaws (ii) the transfer of equity to a third party or (iii) the liquidation of the legal entity that would lead to the reimbursement of equity holders contributions.

## 21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

Since 2017, only five companies have gone public on Mexican markets. Mexican companies seek an IPO on foreign stock exchanges (usually, in the US), from time to time, for several reasons. Firstly, it simplifies their access to external funding, allowing Mexican companies to tap into a larger pool of global investors. Secondly, it attracts foreign investors, broadening their investor base and potentially increasing the company's valuation. Thirdly, going public in a foreign stock market can facilitate the internationalization of products or services, expanding the reach beyond Mexican borders.

Moreover, listing on foreign stock markets (such as NYSE or NASDAQ) enhances the visibility of Latin American companies, which can boost their reputation and credibility. Lastly, it opens doors to new markets in numerous other countries, enabling companies to explore global opportunities and partnerships.

## 22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

In Mexico, M&A, investment, and joint venture agreements typically include provisions for dispute resolution through international arbitration instead of domestic courts. This choice is common due to its neutrality and international recognition for resolving conflicts, which can be more efficient and enforceable than relying solely on domestic courts. However, the choice of dispute resolution method can vary based on the preferences and negotiation power of the parties involved, including the option of setting jurisdiction to judicial courts in Mexico or elsewhere (in some cases depending on the nationality of the parties).

## 23. How long does a typical contract dispute case take in domestic courts for a final resolution?

The duration of a typical contract dispute case in Mexican domestic courts can vary widely, depending on factors such as the complexity of the case, court workloads, and local legal procedures. For some matters (i.e. civil/real estate matters) the applicable jurisdiction is on State Courts, in opposition to Federal Courts, therefore, the timeframe may substantially vary

depending on the State/City. On average, it could take from 2-4 years to reach a final resolution, including all available instances.

#### **24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?**

Overall, the legal system in Mexico is well-established and can be reliable for enforcing these rights. Certainly, the reliability of domestic courts in Mexico in enforcing the rights of foreign investors under agreements and the law may vary depending on the local jurisdiction that handles the matter and other circumstances. However, as in any country, it's important to consider factors such as efficiency of the judiciary, and the potential for political interference. Nevertheless, Foreign investors have exactly the same treatment as nationals, in the conduction of judicial procedures in our country.

#### **25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?**

In Mexico, cases of abuse of foreign investors can occur in various forms, such as regulatory changes, governmental contract breaches, and expropriation without compensation. How these cases are handled can depend on the legal and regulatory framework of the host country in the very particular matter in dispute. Foreign investors often seek remedies through negotiation, international arbitration, or diplomatic channels. International investment treaties and BIT's can offer protection against abuse. Mexico is signatory of a large number of BIT's and Trade Agreements, that offer a reasonable level of protection to foreign investors.

#### **26. Are international arbitral awards recognized and enforced in your country?**

International arbitral awards are typically recognized and enforced in Mexico unless one of the limited grounds for refusing recognition and enforcement is shown. Mexico is a signatory to the New York Convention on the

Recognition and Enforcement of Foreign Arbitral Awards, which governs the enforcement of international arbitral awards in the country and sets the very limited grounds for refusing recognition and enforcement. Also, Mexico has incorporated into the Commerce Code the UNCITRAL Model Law (1985) with minor amendments, and in general terms, local Courts are supportive to arbitration, and their approach is typically favorable to enforcement of arbitral awards. However, it's important to note that interpretation of the grounds for recognition and enforcement can vary, and challenges may arise in some particular cases. Bear in mind that as part of Mexico's system for protection of constitutional rights, its federal judicial system has constitutional courts that deal with the Amparo proceeding (constitutional remedy). This is relevant because a decision resulting from the special commercial proceeding available to parties in an arbitration for the recognition or enforcement of an arbitration award can be challenged via the Amparo proceeding.

#### **27. Are there foreign investment protection treaties in place between your country and major other countries?**

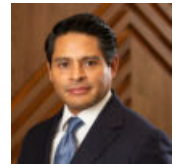
Mexico has established a range of international treaties and agreements to facilitate and protect foreign investments within its borders. Notable among these are the USMCA (between Mexico, the US, and Canada), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, as well as agreements like the Agreement on Facilitation and Reciprocal Protection of Investments with countries such as Spain, Italy, Switzerland, and others.

These treaties and agreements are designed to create a favorable environment for foreign investment in Mexico by offering legal protection to foreign investors and their investments, as well as a mechanism for dispute settlement in those cases where Mexico defaults under its obligations under the treaty or agreement in detriment of the foreign investor. It is important to note that the standards of protection and definitions such as investor and investment can vary from one treaty to another.

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