Baker McKenzie.

Doing Business in Mexico

2025

Table of Contents

Foreword

By: Pepe Larroque

2025 will be a remarkably interesting and challenging year for companies all over the world, particularly in the North America region, where political changes and new administrations in Mexico, the United States and Canada will try to consolidate regional integration.

The main concern is the dynamic between the incoming administrations in Mexico and the US. The situation is still evolving, and companies need to stay alert to potential regulatory changes in both countries, whether they are international corporations with a presence in the region, American companies operating in Mexico or Mexican companies operating in the US and Canada.

The upcoming review of the United States-Mexico-Canada Agreement in 2026 will be a major focus for experts in all three countries. This deal is crucial for regional integration, and companies with operations in Mexico must monitor it closely. A revised and strengthened deal will bring certainty for all involved parties.

Despite these regional challenges, there are positive signs internally. The Sheinbaum administration is promoting investment through the "Plan Mexico 2030" initiative, which aims to strengthen the economy and promote regional development within Mexico.

Companies operating in Mexico must keep up with regulatory developments in areas such as labor, tax and customs. Compliance and strategic prevention are key for all sectors, especially in areas of strategic importance like energy, telecommunications and manufacturing.

Mexico presents great opportunities. To seize them, companies must prioritize solid operational foundations. This guide serves as a comprehensive resource to understand the operational aspects and practices in the country.

José (Pepe) Larroque
Mexico Managing Partner

Glossary

Abbreviation	Definition
AEO	Authorized Economic Operator
ANAM	National Customs Agency (Agencia Nacional de Aduanas de México)
APG	Accelerated Patent Grant Agreement
ASEA	National Industrial Safety and Environmental Protection Agency for the Hydrocarbons Sector (Agencia de Seguridad, Energía y Ambiente)
BEPS	Base Erosion Profit Shifting
BIT	Bilateral investment treaty
CBFE	Stock certificates (Certificados Bursátiles de Inversión en Energía e Infraestructura)
CERPIs	Investment project certificates (Certificados de Proyectos de Inversión)
CKDs	Certificates of capital development (Certificados de Capital de Desarrollo)
CNBV	National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores)
CNH	Hydrocarbons Commission (Comisión Nacional de Hidrocarburos)
COAGUA	National Water Commission (Comisión Nacional del Agua)
COFECE	Federal Economic Competition Commission (Comisión Federal de Competencia Económica)
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
C-TPAT	Customs Trade Partnership Against Terrorism
CUCA	Capital contributions account (Cuenta de Capital de Aportación)
CUFIN	Net tax income account (Cuenta de Utilidad Fiscal Neta)
DOF	Federal Official Gazette (Diario Oficial de la Federación)
DTA	Customs processing fee (derecho de trámite aduanero)
EFTA	European Free Trade Association
EIA	Environmental impact authorization
ELL	Environmental Liability Law
ERP	Enterprise resource planning
EUFTA	Free trade agreement entered by Mexico with the European Union
FCC	Federal Criminal Code
FFPPI	Federal Law for the Protection of Industrial Property (Ley Federal de Protección a la Propiedad Industrial)
FIBRA	Infrastructure and real estate trust (Fideicomisos de Infraestructura y Bienes Raíces)
FIBRA E	Energy and infrastructure investment trust
FIL	Foreign Investment Law
FIT	Federal Institute of Telecommunications
FLL	Mexican Federal Labor Law
FTA	Free trade agreement
FTL	Foreign Trade Law
GATT	General Agreement on Tariffs and Trade

GLAR	General Law of Administrative Responsibilities
GLCC	General Law of Commercial Companies
Hacienda	Ministry of Treasury and Public Credit (Secretaría de Hacienda y Crédito Público)
HTS	Harmonized Tariff Schedule
IEPS	Special tax on products and services (Impuesto Especial sobre Producción y Servicios) or excise tax
IMPI	Mexican Institute of Industrial Property (Instituto Mexicano de la Propiedad Industrial)
Infonavit	National Housing Fund Institute (Instituto del Fondo Nacional de la Vivienda para los Trabajadores)
ITL	Mexican Income Tax Law
LFDA	Federal Copyright Law (Ley Federal del Derecho de Autor)
LFPPI	Federal Law for the Protection of Industrial Property (Ley Federal de Protección a la Propiedad Industrial)
LIGIE	General Import and Export Duties Law (Ley de los Impuestos Generales de Importación y de Exportación)
MCL	Mexican Competition Law
MLI	Multilateral instrument
NAFTA	North American Free Trade Agreement
NAS	National Anti-Corruption System
NCCP	National Code of Criminal Procedures
NCFI	National Commission of Foreign Investments
NOMs	Mexican Official Standards (Norma Oficial Mexicana)
NRFI	National Registry of Foreign Investment
NSR	National Securities Registry
NTRRs	Nontariff regulations and restrictions
OECD	Organization for the Economic Cooperation and Development
PAMA	Procedimiento Administrativo en Materia Aduanera
PCT	Treaty of Patent Cooperation
PPH	Patent Prosecution Highway
PROFEPA	Federal Bureau of Environmental Protection (Procuraduría Federal de Protección al Ambiente)
PROSEC	Sectorial Promotion Programs (Programa de Promoción Sectoria)
PTU	Participación de los Trabajadores en las Utilidades
RAN	National Agrarian Registry (Registro Agrario Nacional)
REAT	Real estate acquisition tax
RFC	Federal Taxpayers' Registry (Registro Federal de Contribuyentes)
RGCE	Foreign Trade General Rules (Reglas Generales de Comercio Exterior)
S. de R. L.	Sociedad de Responsabilidad Limitada
S. de R.L. de C.V.	Sociedad de Responsabilidad Limitada de Capital Variable
S.A.	Sociedad Anónima
S.A. de C.V.	Sociedad Anónima de Capital Variable

SABs	Sociedades Anónimas Bursátiles
SAGG	Ministry of Anti-Corruption and Good Government
SAPIBs	Sociedades Anónimas Promotoras de Inversión Bursátil
SAPIs	Sociedades Anónimas Promotoras de Inversión
SAT	Tax Administration Service (Servicio de Administración Tributaria)
SE	Ministry of Economy (Secretaría de Economía)
SECIIT	Sistema Electrónico de Control de Inventarios para Importaciones Temporales
SEDATU	Ministry of Agrarian, Territorial and Urban Development (Secretaría de Desarrollo Agrario, Territorial y Urbano)
SEMARNAT	Federal Environmental Ministry (Secretaría de Medio Ambiente y Recursos Naturales)
SENER	Ministry of Energy (Secretaría de Energía)
SML	Securities Market Law
SRE	Ministry of Foreign Affairs (Secretaría de Relaciones Exteriores)
STPS	Federal Ministry of Labor and Social Welfare (Secretaría del Trabajo y Previsión Social)
TRD	Technology research and development
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization
UFA	Adjusted tax profit (Utilidad Fiscal Ajustada)
UMA	Unit of Measure and Upgrade (Unidad de Medida y Actualización)
USMCA	United States-Mexico-Canada Agreement
USPTO	United States Patent and Trademark Office
VAT	Value-added tax
WIPO	World Intellectual Property Organization

Foreign Investment Law

1. Foreign Investment Law

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

2. No restrictions on most investments

As a general rule, the FIL allows foreign investors and Mexican companies controlled by foreign investors, without prior approval, to

i. own up to 100% of the equity of Mexican companies

ii. purchase fixed assets from Mexican individuals or entities

iii. engage in new activities or produce new products

iv. open and operate establishments and

v. expand or relocate existing establishments

The only exceptions to that general rule are those expressly established in the FIL itself (discussed in the section "Restricted activities under the FIL" below) or, in the case of the financial sector, in the legislation covering that sector. This new regulatory framework replaces the restrictions of the old foreign investment law, which generally limited foreign investment in Mexican companies to 49% or less.

3. Restricted activities under the FIL

The FIL lists certain economic activities that are

i. reserved to the Mexican State

ii. reserved to Mexican nationals or Mexican companies without foreign equity participation

iii. subject to quantitative foreign investment limitations and

iv. subject to prior approval if the foreign investor wishes to own more than 49% of a company engaged in those activities.

a. Activities reserved to the Mexican State

In compliance with the Mexican Constitution and as a reflection of historical concerns regarding private investment, the FIL reserves certain strategic areas to the Mexican State. Neither Mexican nor foreign investors may engage in these areas of economic activity. These areas include

i. exploration and extraction of petroleum and other hydrocarbons

ii. planning and control of the national electricity system, as well as the public service of transmission and distribution of electricity

iii. nuclear energy generation

iv. radioactive minerals

v. telegraphs

vi. radio telegraphy

vii. mail service

viii. issuance of money

ix. control, supervision and security of ports, airports and heliports

x. certain others expressly indicated under the corresponding legislation

Points (i) and (ii) will be carried out in accordance with the Mexican Constitution and the regulations on electricity.

b. Activities reserved to Mexican investors

The activities that the FIL reserves to Mexican nationals and to Mexican companies without foreign equity participation include

i. domestic land transportation of passengers, tourism and cargo, excluding messenger and courier services

ii. development banks

iii. professional and technical services reserved to Mexicans under the corresponding legislation

Under the FIL, foreign investors may not engage in any of the foregoing activities, directly or indirectly, through any agreement or corporate structure or scheme, except through special approved "neutral" shares without voting rights or with limited corporate rights, or as otherwise approved by the National Commission of Foreign Investments (NCFI).

c. Activities with foreign investment equity limitations

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

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

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

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

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

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

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

4. Nonrestricted activities under the FIL

Under the FIL, a foreign investor may acquire more than 49% of the equity of an existing company owned by Mexican investors, without the NCFI's prior approval, provided that the target company is not engaged in a restricted activity and the total value of the assets of that company does not exceed certain monetary thresholds established annually by the NCFI. Currently, this threshold is MXN 26,978,252,017.64 (approximately USD 1.35 billion), valid as of June 2024 pursuant to the publication made in the Federal Official Gazette (Diario Oficial de la Federación (DOF)) dated 24 June 2024, and until a new general resolution is issued.

5. Branches and representative offices

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

6. Registration requirements

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

7. Repatriation and remittance rights

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

8. Real estate

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

a. Restricted Zone

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

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

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

b. Non-rural land outside Restricted Zone

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

c. Rural land outside the Restricted Zone

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

d. Quantitative restriction of land ownership

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

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

Competition Law

1. Competition Law

In Mexico, the first Antitrust Law dates back to December 1992. Since then, the Mexican antitrust legal framework has been changing. The Federal Economic Competition Commission (Comisión Federal de Competencia Económica (COFECE) or **"Mexican Competition Authority"**) enforces the Mexican Competition Law (MCL), including handling merger control processes, monopolistic practices investigations and proceedings to resolve the existence of dominant undertakings.

Please note that the most recent development was on 28 November 2024, when the Mexican Senate approved the "Decree by which several provisions of the Political Constitution of the United Mexican States are amended, added and repealed, regarding Organic Simplification" (**"Decree"**).

Before the Decree, COFECE and the Federal Institute of Telecommunications (FIT) coexisted as autonomous constitutional bodies in charge of enforcing the MCL and were not part of the executive branch, the legislative branch or the judiciary. The FIT used to enforce the MCL in matters involving telecommunications and broadcasting, whereas COFECE dealt with all other industries.

The Decree proposes the centralization of the activities and attributions of the competition authority under the control of the Federal Public Administration.

The Decree does not establish the details of the internal structure that the new Mexican Competition Authority will have. What the Decree does establish is the consolidation of competition powers in COFECE. This includes the competition powers related to sectorial issues that the FIT used to have in the telecommunications and broadcasting industries.

Additionally, the Decree also establishes that the separation between the authority that investigates and the authority that resolves the antitrust proceedings will be guaranteed. Likewise, from the information available to the public, it appears that a collegiate decision-making body may be created to replace the current board of commissioners.

Regarding the implementation of the Decree, it establishes a special transitional regime for the reorganizations and dissolution — in the FIT's case — of the current competition authorities. According to its text, the modifications related to these authorities will materialize 180 days after the entry into force of the secondary legislation that needs to be developed. Notably, the Decree does not establish a term for Congress to issue this legislation, so there is no certainty as to when this will occur and therefore when the new text will take effect.

Currently, the MCL

i. restricts monopolistic practices and regulates concentrations

ii. grants the Mexican Competition Authority broad investigative and enforcement powers

iii. sets forth the basic procedure for actions to be carried out by and/or before the Mexican Competition Authority

iv. establishes the sanctions that may apply for breaching the Competition Law, without prejudice to the private right of action for damages and lost profits that might be applicable.

The MCL is applicable to all areas of economic activity and is widely followed in Mexico; therefore, all companies and individuals should observe this law.

2. Monopolistic practices

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

a. Horizontal monopolistic practices

Horizontal monopolistic practices or cartel practices are defined as any agreement between competitors with the purpose of eliminating competition between them. According to the MCL, typical horizontal monopolistic practices include contracts, agreements, arrangements or combinations among competitors, whose purpose or effect is to

i. fix, raise, coordinate or manipulate prices

ii. limit production, purchase or distribution

iii. divide, distribute or allocate portions or segments of the markets

iv. "rig" bids

v. exchange information resulting in any of the purposes or effects referred to in any of the abovementioned conducts (under items (i) to (iv) above).

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

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

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

ii. Fine up to USD 1,085,700 for any individual participating in such practices on behalf of a company

iii. Fine up to USD 977,130 for fostering or supporting such practices

iv. Ban from holding managerial and representative positions in a company for up to five years

b. Civil and criminal penalties

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

The Mexican Competition Authority is entitled to request the attorney general to bring the criminal action against an offender, identifying the individuals who are allegedly responsible for the corresponding horizontal monopolistic practice

c. Abuse of dominance practices

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

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

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

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

i. Between noncompetitors

a. establishing exclusive marketing or distribution agreements, whether based on subject matter, geographic territories or time periods, including the division, distribution or allocation of customers or suppliers; and

b. imposing noncompete obligations for certain periods

ii. Imposing price or other conditions on distributors or suppliers on the resale of goods or the provision of services

iii. Bundling/tying sales

iv. Conditioning sales, purchases or other transactions on not dealing with certain third parties

v. Refusing to deal with certain parties

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

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

viii. Selling or granting discounts conditioned on exclusivity

ix. Carrying out crossed subsidies

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

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

xii. Discriminatory access to essential inputs

xiii. Margin squeeze

Abuse of dominance practices, unlike horizontal monopolistic practices (explained below), are not illegal per se. Thus, for such practices to be illegal, they must

i. be performed by an undertaking with substantial market power (or dominance)

ii. unduly displace other companies from the market

iii. have a negative impact on the involved markets.

In Mexico, the following are the administrative penalties for abuse of dominance practices:

i. Fine of up to 8% of the responsible company's annual revenues in Mexico

ii. Fine up to USD 1,085,700 for any individual participating in such practices on behalf of a company

iii. Fine up to USD 977,130 for fostering or supporting such practices

iv. Ban from holding any managerial and representative positions in a company for up to five years

3. Merger control (concentrations)

Mexico has a merger control regime. Please note that the MCL sets the thresholds to determine whether a transaction (or concentration) triggers a merger control process and the parties to the transaction must secure clearance from the Mexican Competition Authority before completing their operation, i.e., before closing. Further details are included in the following sections.

In general terms, a concentration is defined as any merger, acquisition of control or any other act by which companies, associations, shares, partnership interests, trusts or assets in general are acquired, i.e., basically any transaction is considered as a concentration under the terms of the MCL. A prohibited concentration is defined as a merger, acquisition or other action between any persons or entities, whether competitors or not, having the purpose or effect of diminishing, harming or impeding competition in identical, similar or substantially related goods or services. The MCL identifies certain items that the Mexican Competition Authority must consider in determining whether a concentration is prohibited, such as the possible market power, potential barriers to entry, foreclosure effects or price-fixing capabilities resulting from the concentration. The Mexican Competition Authority has the power to condition approval of a proposed concentration on the restructuring of the transaction to avoid anti-competitive consequences. In addition, the Mexican Competition Authority is also empowered to order the partial or full unwinding of a prohibited concentration.

The Mexican Competition Authority must be given prior notice of a proposed concentration if the intended transaction

i. has a price or value in Mexico exceeding 18 million times the value of the Unit of Measure[1] (Unidad de Medida y Actualización (UMA))[2] (approximately USD 97.71 million[3])

ii. involves the accumulation of more than 35% of the assets or shares of an undertaking whose assets or sales in Mexico exceed more than 18 million times the UMA (approximately USD 97.71 million)

iii. a. implies an accumulation of assets or capital stock in the Mexican Republic that exceeds 8.4 million times the UMA (approximately USD 45.59 million) and

b. involves undertakings whose combined assets or annual sales in Mexico exceed 48 million times the UMA (approximately USD 260.56 million).[4] Failure to file can result in a fine of up to 5% of the parties' annual turnover generated in Mexico.

1. Measure Unit and Upgrade (UMA) (inegi.org.mx).
2. The value of the UMA (from 1 January 2025) is MXN 113.14. Note that the value of the UMA is updated each year, and the next update should be published by mid-January 2026.
3. Taking this into consideration, this threshold amounts to approximately MXN 1.95 billion.
4. The exchange rate is volatile. For reference purposes, we used an exchange rate of MXN 20 per USD 1 to calculate these amounts.

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

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

On 8 December 2017, COFECE introduced and set the rules under which it will operate its electronic merger control filing system. In light of the abovementioned, as of 2018, the parties to a reportable transaction can notify such operation either in person at COFECE's Filing Office (as customary) or electronically through the abovementioned merger control filing system. As of 8 April 2021, the new Guidelines for Concentration Notification were approved and published.[5] The purpose of these Guidelines is to ease and expedite the notification of a concentration using the electronic filing process. Electronic notification of concentrations has been obligatory since January 2020.

4. The Mexican Competition Authority

The agency responsible for enforcing the MCL is the Mexican Competition Authority, which has broad investigation and enforcement powers. It may initiate administrative procedures on its own or at the request of third parties. Once the procedures are initiated, it can investigate and resolve such cases and enforce its orders through administrative penalties. It may also refer criminal cases to the district attorney. Moreover, the Mexican Competition Authority may issue opinions, both binding and nonbinding, in antitrust matters.

5. Dawn raids

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

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

6. Action for damages and lost profits

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

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

5. DOF-08-04-2021

7. Legal privilege

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

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

IMMEX or maquiladora program

1. IMMEX or maquiladora program

The Mexican maquiladora or "IMMEX" program was introduced over 45 years ago by the Mexican government to promote employment in Mexico. The maquiladora industry in Mexico is governed by the Decree for the Promotion of the Manufacturing, Maquiladora and Export Services Industry (**"Maquiladora Decree"** or **"IMMEX Decree"**)[6] and the Mexican Income Tax Law (ITL).

2. Corporate presence in Mexico

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

3. Import permits and operation

The SE is the authority in charge of authorizing the maquila or IMMEX program. For a company to qualify and obtain this authorization, the company must submit certain documentation and provide detailed information about the manufacturing process or service operation to be carried out, including descriptions of the following:

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

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

The SE has 15 business days from the maquiladora application's date of filing to issue its resolution. If the SE does not issue a resolution within this period, the application will be deemed to be approved. The approved maquiladora program will remain valid as long as the company continuously complies with all the provisions of the IMMEX Decree and the specific conditions for approval.

6. The former Maquiladora Decree and the former PITEX Decree were merged into the IMMEX Decree as of 1 November 2006. Thereafter, more than 10 amendments have been made to the IMMEX Decree, mainly to regulate specific requirements for the importation of sensitive materials and other goods into Mexico.

a. Maquila services

The IMMEX Decree provides for different types of maquiladoras: industrial, services, holding, outsourcing and shelter. The most common are the industrial maquiladoras (engaged in manufacturing activities) and services maquiladoras (engaged in providing services for goods to be exported or providing export services). Currently, companies that qualify for a services maquiladora program include those providing services for importation, warehousing, distribution, classification, inspection, testing, verification, repair, reworking and recycling of goods intended for export. Services such as product design, engineering, software-related, administration and information technology services may also qualify under a services maquiladora program.

In addition to the customs benefits of a maquiladora program, several companies have traditionally subjected their operations to the so-called maquila income tax regime. Specifically, as of January 2014, the ITL includes a definition of what constitutes a “maquila operation” for the purposes of exempting the maquiladora’s foreign principal from a permanent establishment exposure (known as a maquila operation for income tax purposes or maquila income tax regime).

4. Temporary importation

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

The program regulates a list of products for which temporary importation demands a second degree of permitting. These are known as “sensitive goods.” Annex II of the IMMEX Decree details the Harmonized Tariff Schedule (HTS) codes that constitute sensitive goods, which include, among others, some aluminum, steel and textile products. Temporary importation would be possible if the maquiladora in question seeks a specific permit from the SE, justifying the needs and providing evidence of infrastructure to process the sensitive goods.

Pursuant to the tax reform of 2014, the temporary importation of goods under an IMMEX program are subject to the cash payment of value-added tax (VAT) and special tax on products and services (Impuesto Especial sobre Producción y Servicios (IEPS)). Alternatively, importers may avoid disbursement of such VAT upon temporary importation of goods by

i. securing a certification from the tax authorities to access advanced credit for the VAT to be levied upon temporary importation (**“VAT/IEPS Certification”**) or

ii. using a surety bond to guarantee the subsequent exportation of the goods that were temporarily imported.

One of the most important obligations for maquiladoras is that every good imported on a temporary basis must be

i. exported within the legally prescribed time frame or

ii. changed from a temporary to permanent importation within the legally prescribed time frame, paying the corresponding duties and taxes and complying with any applicable nontariff regulation. The period of time under which temporarily imported goods may remain in Mexico under the temporary importation customs regime varies as follows:

- Up to 18 months for raw materials, parts, components, auxiliary materials, packaging material, fuel and lubricants, as well as labels and bulletins, if those goods are imported by an IMMEX company
- Up to 36 months if those goods are imported by an IMMEX company that is also authorized under the Authorized Economic Operator (AEO) Certification modality, or up to 48 months if the importer is also authorized under the Sistema Electrónico de Control de Inventarios para Importaciones Temporales (SECIIT) modality
- Up to 24 months for trailer containers and other containers
- For the validity of the IMMEX program for machinery and equipment

As a general rule, an IMMEX company is not allowed to sell or transfer temporarily imported goods to other companies in Mexico except when such sales or transfers are made to

a. other maquiladoras

b. Mexican automobile manufacturers or

c. companies that are authorized to import goods under the strategic bonded warehouse regime.

When temporarily imported goods are transferred between maquiladoras, the goods are considered as virtually exported by the transferor maquiladora and virtually imported by the transferee maquiladora on a temporary importation basis. In such cases, the transferred goods must be exported or be subject to a change of custom regime by the transferee from temporary importation to definitive importation within six months as of the date of transfer. If the transferee is a company that operates under the certification program of the Foreign Trade General Rules for 2024 (Reglas Generales de Comercio Exterior (RGCE)), then the term for the good to remain in Mexico is the one prescribed by law as mentioned above.

In connection with the above, the RGCE sets forth that companies certified under the AEO Certification modality are allowed to transfer goods temporarily imported to non-IMMEX companies as long as such companies comply with the requirements for such transaction.

5. Import duties

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

a. Duties on the importation of machinery and equipment

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

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

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

These rules are the same applicable under the North American Free Trade Agreement (NAFTA).

c. Duties on the importation of raw materials, parts and components pursuant to the provisions of the EUFTA

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

Other free trade agreements

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

The CPTPP eliminates and reduces tariff barriers and regulations in a substantial manner throughout the entire spectrum of commerce, including the commerce of goods and services, as well as investments, creating new opportunities and benefits for companies, workers and consumers.

6. Certified Companies Framework

Maquiladora companies and certain non-maquiladora companies may secure a special registration from Mexican customs authorities to operate as a "certified company." This special registration grants companies access to benefits that facilitate cost and time savings, such as easier and expedited customs clearance processes, reduction in documentation requirements, as well as certain tax and customs advantages related to the virtual exportation and importation of goods. The specific benefits granted to each company depend on the category under which each company is authorized.

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

- VAT and IEPS (A, AA and AAA categories)
- Trader and importer
- AEO, with the following modalities:
  - importer and/or exporter
  - controller
  - aircrafts
  - SECIIT
  - textile
  - strategic bonded warehouse
  - third-party services provider
- Certified Commercial Partner, which includes the following modalities:
  - terrestrial carrier
  - customs broker
  - railway transport
  - industrial park
  - bonded warehouse
  - courier companies

a. Requirements for registration under the Certified Company Framework

Companies must follow certain requirements and steps to register under the Certified Companies Framework. There are general requirements for all categories, as well as specific requirements for each category and/or submodality, such as the value of importations, compliance with tax and customs obligations, number of employees and value of fixed assets, among others.

By virtue of the above framework, it is possible to apply for registration as a certified company under the VAT/IEPS and AEO categories simultaneously. Additionally, it establishes the possibility of automatically renewing such registration as of the business day following the date of filing of the automatic notice and the standardization of the validity of the VAT/IEPS — AEO certifications.

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

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

7. Tax implications

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

a. Structuring of operations

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

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

A more common structure for maquiladora operations is the so-called consignment manufacturing model (or toll-manufacturing) whereby a foreign company provides (on a free bailment basis) the inventory to the maquiladora company, which processes the inventory in exchange for a manufacturing services fee. In addition to the above, whenever the foreign principal of the Mexican contractor also consigns machinery and equipment to the maquiladora, the operation will be structured under the maquila income tax regime, and additional conditions will have to be met. In any event, through the consignment manufacturing model, the finished products are owned by the foreign resident.

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

b. Tax benefits of operating as a maquiladora for the purposes of the ITL

Maquiladoras are subject to Mexican taxes, including income tax and VAT. The tax benefits of operating through a maquiladora tax regime structured under the consignment manufacturing model are summarized as follows:

- The ability to engage in consignment manufacturing (i.e., toll manufacturing) with a foreign principal without exposing the foreign principal to the risk of having a tax presence (i.e., a permanent establishment) in Mexico that subjects the foreign principal to the payment of Mexican income tax
- The income tax liability as determined pursuant to the maquiladora's income tax base at the general rate of 30%
- The application of special transfer pricing rules, to determine the tax profit as the greater of
    i. 6.5% of all the incurred costs and expenses, or
    ii. 6.9% of all the assets operated or available for operation by the Mexican maquiladora (inclusive of financial assets, value of inventories and others), as provided in Article 182 of the ITL
- VAT at the 0% rate on the invoices issued by the maquiladora to its foreign related party for the manufacturing processing or service fee
    i. Requirements to have a maquila operation to avoid permanent establishment exposure for the foreign principal in Mexico

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

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

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

i. IMMEX shelter companies

Foreign residents who undertake operations in Mexico through an IMMEX company authorized under a shelter modality may also be deemed not to have a permanent establishment in the country, provided that they meet certain requirements and conditions. These include the recognition of a taxable income of the foreign resident in Mexico to be paid by the nonresident through the shelter operator who acts as an agent before the Mexican tax authority. The level of taxation to be paid by the nonresident is determined by following the so-called safe harbor methodology applicable to the maquiladora income tax regime (the higher of 6.5% of incurred costs and expenses and 6.9% of all available assets).

8. Sales into the Mexican market

According to the IMMEX Decree, maquiladoras may sell a portion of their output in the domestic Mexican market. From a customs standpoint, a maquiladora company may sell in the domestic market up to 90% of the total value of its annual sales. However, should a maquiladora undertake any sale activity in Mexico, such company will be disqualified from the maquila income tax regime. Therefore, careful consideration should be given to the actual need and implications of making any kind of sales into Mexico, which would require sufficient planning to define the best operating model to prevent unnecessary tax exposure.

If a sale is undertaken by an IMMEX company not operating under the maquila income tax regime, import duties and VAT should be paid through a change of customs regime on all temporarily imported materials or components contained in the finished product to be sold in the Mexican market, unless the sale is made to a foreign resident with a physical delivery to another IMMEX company or is a direct sale to another IMMEX company in accordance with customs procedures mentioned above.

Considering the complex tax rules on sales, most companies structure the sale of products by the nonresident and principal of the maquiladora to another nonresident that in turn is also a principal of another maquiladora company, preventing the generation of sales revenue on the maquiladora company.

Company law

1. Forms of business organizations

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

- Corporations (Sociedad Anónima (S.A.) or Sociedad Anónima de Capital Variable (S.A. de C.V.))
- Limited liability companies (Sociedad de Responsabilidad Limitada (S. de R. L.) or Sociedad de Responsabilidad Limitada de Capital Variable (S. de R.L. de C.V.))

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

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

- Investment development corporations (Sociedades Anónimas Promotoras de Inversión or SAPIs)
- Securities investment development corporations (Sociedades Anónimas Promotoras de Inversión Bursátil or SAPIBs)
- Publicly held corporations (Sociedades Anónimas Bursátiles or SABs)

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

Under the SAPIB modality, legal entities that require financial resources to achieve their particular objectives are incorporated, and for this, they have the possibility of financing themselves through the issuance of shares (variable income) and debt securities or bonds (fixed income). SAPIBs trade their shares on the stock market. These shares are registered in the National Securities Registry (NSR) and authorized by the National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores (CNBV)).

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

2. Corporations

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

a. Capital stock

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

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

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

b. Minimum number of shareholders

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

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

Once the registry is created, a notice regarding the current shareholding structure must be filed in the electronic system established by the SE regarding the shareholders and the current capital structure. In the case of any update to the shareholding structure, a notice must be filed in the electronic system.

Likewise, corporations with foreign shareholders must be registered in the National Registry of Foreign Investment (NRFI). In the event that

i. a new foreign shareholder is admitted to the corporation

ii. a shareholder transfers its shares or

iii. the corporation changes its domicile or corporate name, a notice must be filed with the NRFI.

c. Management

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

The corporation's sole administrator, board of directors or shareholders will be vested with the authority to appoint one or more general or special managers. This appointment may be revoked at any time by the corporation's sole administrator, board of directors or shareholders.

Appointment as sole administrator, board member and/or general or special manager is subject to certain statutory limitations contemplated by the GLCC.

d. Management oversight

To better protect the shareholders' interests in corporations, the GLCC states that its oversight will be managed by one or more statutory examiners (Comisario) appointed directly by shareholders. Their main rights and obligations will be to present to the ordinary general shareholders' meeting (Asamblea General Ordinaria de Accionistas) annually a report addressing the truthfulness, adequacy and reasonableness of the information presented by the sole administrator or board of directors, as the case may be, to the shareholders' meeting.

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

e. Annual shareholders' meetings

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

Shareholders can be represented by attorneys-in-fact in shareholders' meetings pursuant to the corporation's bylaws. However, the sole administrator, members of the board of directors or statutory examiners cannot serve as attorney(s)-in-fact to represent shareholders in meetings.

3. Limited liability companies

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

a. Capital

For the incorporation, a limited liability company must have a fully subscribed capital with at least two equity quotas valued no lower than MXN 1 each (minimum fixed capital), as established by the members in the company's charter and bylaws, and at least 50% of the capital contribution must be fully paid. The assignment of equity quotas, as well as the admission of new members to participate in the limited liability company's social capital, requires a prior favorable resolution of the majority of its members, unless the company's bylaws establish a higher percentage. If the transfer of an equity quota is authorized in favor of a third party, the members of the company will have a preferential right that must be exercised within 15 days after the date on which the transfer was authorized.

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

Once the registry is made, a notice regarding the current members and the current capital structure must be filed in the electronic system established by the SE.

Likewise, limited liability companies with foreign members must be registered in the NRFI.

i. a new foreign member is admitted to the company

ii. a member transfers its equity quota or

iii. the company changes its domicile or corporate name, a notice must be filed with the NRFI.

b. Number of members

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

c. Management

The limited liability company's management may be vested in one (sole manager) or more managers (board of managers), who can be freely removed by the company's members at any time. Whenever two or more managers are entrusted with the management of the company, they must act as a board of managers. The company will be legally represented by its sole manager or its board of managers, as the case may be, whose authority will be established in the company's bylaws or conferred by the members.

As in the case of corporations, some statutory limitations established by the GLCC will be applicable to the appointment of the company's sole manager or the managers who form the board of managers.

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

d. Annual members' meeting

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

4. SAPIs

SAPIs are corporations that can be incorporated as investment promotion corporations or adopt the SAPI regime, in accordance with the provisions of the SML and for all not provided in such law, by the GLCC. While the SAPIs do not need to register their securities with the NSR, they may request the registration in the NSR of their shares or credit instrument representing such shares by adopting the SAPIB regime.

SAPIs must become SAPIBs to list their shares on a stock exchange. SAPIs are not subject to the CNBV's oversight, unless their securities are registered with the NSR.

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

Likewise, the appointment of a member of the board of administration will only be revoked by other shareholders when the revocation of all the members of the board is made, in which case the replaced members will not be reappointed to the role for a 12-month period following the revocation date.

SAPIs may, with prior approval from their board of directors, acquire their own shares by

a. charging them to their net worth, in which case the SAPIs may retain the shares and no capital reduction will be needed, or

b. charging them to their paid-in capital, provided that such shares are canceled or converted into issued unsubscribed shares held by the SAPI's treasury.

SAPIs are subject to a regulatory framework different from that applicable to corporations in accordance with the GLCC with respect to minority rights. Some of the differences are as follows:

i. The right to appoint or revoke the appointment of a member of the board of directors and a statutory examiner (as the case may be), for shareholders holding at least 10% of the total voting shares, including those with limited or restricted voting rights (at least 25% in the case of ordinary corporations)

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

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

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

Shareholders of SAPIs may enter into agreements providing for noncompetition, much like S.A. agreements that provide for

i. call and put options subject to diverse modalities

ii. exercise of preferential rights

iii. voting exercise covenants and

iv. covenants for purchase and sales of its shares in public offerings.

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

5. SAPIBs

If an SAPI wishes to register its shares (or instruments representing them) in the NSR and list them on the stock exchange, the SAPI must comply with the requirements applicable to SAPIBs.

To become SAPIBs and hence subject to registration with the NSR, SAPIs must do the following:

i. Request registration with the NSR, and to that effect adopt the information disclosure requirements set forth by the CNBV

ii. Adopt the following resolutions through a shareholders' meeting:

    i. adding the expression "Bursátil" or its abbreviation, the letter "B", to the denomination of the corporation; and

    ii. modifying the SAPIB's bylaws to adapt the integration of the capital stock to the regime applicable to SABs

iii. Have at least one independent member of the board of directors

iv. Appoint a corporate practice compliance committee (which will also have the duties of the auditing committee if so decided by the corporation) to be presided over by an independent member of the board of directors

v. Validate that the board's secretary has authenticated the number of shares held by each shareholder

Once registered with the NSR, to trade on the stock exchange with or without a public offering, an SAPIB must prepare a placement prospectus or informative document establishing its differences from SABs.

6. SABs

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

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

a. Creation of consortia

A group of companies that are part of the same economic unit are characterized, for the purposes of the SML, as a consortium, which is a single economic management and decision unit. Consequently, the SML will be applied to them on a consolidated basis, mainly in aspects such as

i. the disclosure of information (given that any event that affects the value of any of the subsidiaries will affect the value of the consortium)

ii. the auditing and corporate governance roles of the board of directors (so that the operation policies with respect to related parties are observed among all members of the whole consortium) and

iii. consolidated accounting

b. Duties of the board of directors

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

i. Establish general strategies and policies relevant to the operation of the business

ii. Approve relevant transactions or those that SABs enter into with related parties, taking into consideration the prior opinion of the corresponding committee

iii. Oversee the management and governance of the SAB

c. Duties of the general manager

The general manager (as the main officer of the SAB) will be responsible, among other things, for the following:

i. Management, conduct and execution of the day-to-day business

ii. Creation and maintenance of the accounting, control and registry systems

iii. Compliance with the resolutions adopted by the board of directors and the shareholders' meetings, as well as the disclosure of relevant information

d. Oversight

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

e. Integration of board of directors

The board of directors must be formed by a maximum of 21 members, out of whom at least 25% must be independent directors without conflicts of interest with the SAB.

f. Integration of committees

Committees must be formed by a minimum of three independent counselors without conflicts of interest with the SAB, to guarantee the impartiality of their recommendations (although such recommendations are not binding on the board of directors). However, if the board of directors does not comply with a committee's recommendation, this fact must be disclosed to the stock market.

g. Duty of loyalty and duty of care

The functions and responsibilities of the directors and officers of the SAB are regulated. The governing principles of their positions are to

a. create value for the SAB and

b. act in accordance with duty of loyalty and duty of care principles, subject to the business judgment rule.

i. Duty of care

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

ii. Duty of loyalty

In general terms, the duty of loyalty, which extends to members and the secretary of the board of directors of SABs, consists of the obligation to

i. maintain confidentiality of corporate matters of which they gain knowledge in the exercise of their corporate duties

ii. abstain from acting in a manner inconsistent with conflict of interest rules, and

iii. inform the audit committee and the external auditor about any irregularities with the company or the consortium of which they become knowledgeable during the exercise of their appointment.

h. Minority rights

i. At least 5% of shares is needed to exercise a civil action against directors and officers.

ii. Relevant information and relevant events are disclosed to provide fair treatment of stock market participants and allow them to attain a better knowledge of the financial standing of the SAB.

Hostile takeover protection clauses are allowed when

i. they are adopted in an extraordinary shareholders' meeting

ii. no more than 5% of the shareholders present at the meeting have voted against it

iii. they do not exclude from the benefits of such clause a shareholder group different from those who claim to have control and (iv) they do not obstruct in an absolute manner the corporate control of the SAB.

Taxes

1. Treaties

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

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

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

2. Corporate income tax

a. Corporations

Individuals and legal entities are subject to the payment of corporate income tax when

i. they are tax residents of Mexico with respect to their worldwide net income (that is, gross income minus allowable deductions)

ii. they are foreign tax residents with a permanent establishment (tax presence) in Mexico with respect to the income attributable to such permanent establishment; and

iii. they are foreign tax residents with Mexican-sourced income but do not have a permanent establishment in Mexico, or if such income is not attributable to a permanent establishment.

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

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

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

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

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

b. Dividends

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

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

c. Tax withholdings

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

Interest payments to nonresidents are subject to withholding tax at 4.9%, 10%, 15%, 21% or 35%, depending on the type of payee or payer. Under Mexican law in general, if the payee is a foreign bank or any other financial institution that is the beneficial owner of the interests and provides the Ministry of Finance certain information regarding loans granted to Mexican residents, the interest payments will be subject to withholding tax at the rate of 10%. According to the ITL, this percentage could be reduced to 4.9% if the beneficial owner is a resident for tax purposes of a country that has executed a double taxation treaty with Mexico, and the special requirements set forth in that treaty to apply the rates regarding interests are fulfilled. If

i. the payer is a credit institution (and the payee is not a bank or financial institution that provides the required information to the Ministry of Finance to which the 10% tax rate applies);

ii. the payee is either a foreign supplier of machinery and equipment that form part of the fixed assets of the payer; or

iii. the payee is a foreign entity that finances the purchase of such machinery and equipment or provides certain working capital financing pursuant to an agreement that sets forth these circumstances and the entity provides certain information to the Ministry of Finance, the interest payments will be subject to withholding at the rate of 21%.

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

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

d. Sale of shares

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

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

e. Interest deductibility limitations

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

i. Thin capitalization rules

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

ii. Net interests

A limitation on the deductibility of interests was added in Section XXXII of Article 28 of the ITL, as of January 2020.

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

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

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

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

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

f. Transactions and investments related to tax havens

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

g. Transfer pricing

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

h. Transfer pricing rules applicable to maquiladoras

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

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

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

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

- Undertaking of transformation activities as defined by the ITL
- Use of raw materials furnished by the foreign principal, with the requirement to export physically or virtually (to another maquiladora) 100% of the productive output
- At least 30% of the machinery and equipment used by the maquiladora should be owned and provided by the principal (if a maquiladora has maquila operations with several principals, each principal must comply with this 30% requirement). The remaining machinery and equipment may be owned by a third party residing abroad that has a manufacturing commercial relationship with the principal. In no case may such machinery and equipment have been owned by another enterprise residing in Mexico that is related to the maquiladora.
- The totality of the maquiladora's income from productive activities must derive from maquila operations.
- The foreign principal's tax residence is a country with which Mexico has a tax treaty in place.
- The maquiladora and the principal must be related parties.

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

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

3. VAT

Mexico imposes a VAT on the following activities:

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

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

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

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

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

a. VAT credit during preoperative periods

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

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

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

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

b. Digital economy VAT regime

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

i. Downloading or access to images, movies, texts, information, video, audio, music, games, including gambling games, as well as other multimedia contents, multi-gaming experiences, purchasing or otherwise procuring mobile ringtones, streaming news online, traffic information, forecasts, weather forecasts and statistics. This provision does not apply to the download of electronic books, newspapers or magazines

ii. Intermediation services between

    i. third parties that offer goods or services, and

    ii. the recipients of these goods or services

iii. Online clubs and dating websites

iv. E-learning, electronic tests or electronic exercises

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

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

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

4. Tax incentives

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

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

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

Taxpayers that employ individuals with disabilities whose limited capacity has been certified by the Mexican Institute of Social Security are allowed to deduct from their own income tax an amount equivalent to 100% of the withheld and remitted income tax of the disabled employees.

Taxpayers that build or acquire real property intended for lease or its subsequent sale through a trust are granted a tax incentive that includes an exemption from estimated income tax payments. The application of these benefits is contingent on various requirements, such as the following:

i. The trust must be created pursuant to Mexican law.

ii. 70% of trust capital must be allocated to acquire real property for lease and subsequent sale, and the remainder of the capital must be invested in federal government securities.

iii. The buildings/constructions or acquired real property are intended for leasing purposes and are sold after a four-year period has elapsed.

iv. The trust issues participation certificates for the assets in the trust's patrimony, and such certificates are publicly traded or acquired by a group of (at least 10) investors that are not related parties and none of whom controls more than 20% of such certificates.

v. The trust distributes at least once per year 95% of the taxable income of the previous fiscal year generated by the assets in the trust's patrimony.

vi. When variable amounts or amounts referred to as percentages are included in the leasing agreements to determine the consideration or rent payments, these amounts may not exceed 5% of the total amount of the trusts' annual rent income.

vii. The trust is registered in the "Trust Registry" for the construction and acquisition of real estate.

a. North Border Region Tax Incentives decree

On 31 December 2018, the North Border Region Tax Incentives decree was published in the DOF, which granted the following fiscal incentives to taxpayers that carry out operations within the municipalities adjacent to the border with the US:

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

These tax incentives remained in force during 2019 and 2020.

Furthermore, by means of decrees published in the DOF on 30 December 2020 and 24 December 2024, the validity of these incentives was extended until 31 December 2024 and 31 December 2025, respectively.

Through the Decree of Fiscal Incentives of the Southern Border Region dated 30 December 2020, the same incentives were granted to the municipalities of the country's southern border region. Likewise, on 24 December 2024, the Mexican government extended the Southern Border Region tax incentive for the fiscal year 2025.

b. Isthmus of Tehuantepec region tax incentives decree

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

The main tax benefits under the decree are as follows:

A tax credit equivalent to 100% of the income tax triggered during the first three years, reduced to 50% during the three subsequent years (or up to 90% if certain requirements are met)

- A tax credit equivalent to 100% of the VAT for taxpayers that sell goods, provide services or lease goods to persons who carry out productive economic activities within the region (The tax credit can be applied for four years from the entry into force of the decree.)
- Immediate deduction of 100% of investments in new fixed assets, applicable during the first six fiscal years (Certain fixed assets are excluded, such as furniture and equipment, automobiles, automobile armoring equipment or any fixed asset property not individually identifiable.)

c. Nearshoring Tax Incentives Decree

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

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

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

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

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

On 24 December 2024, the Mexican government extended this tax incentive for the fiscal year 2025, reaffirming its commitment to attracting investments and positioning Mexico as a strategic export country.

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

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

To apply both tax incentives, taxpayers must submit a notice opting for the application of the tax incentives no later than 30 calendar days immediately following the month in which the incentives are claimed for the first time. Taxpayers can only apply the tax incentives established in the decree if they submit the notices in a timely manner.

5. Employee profit sharing

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

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

Corporate taxpayers are allowed to deduct the employee profit sharing paid during the tax year from income tax taxable profits. However, the PTU paid is not deductible for the purposes of determining the basis to calculate the PTU of either the tax year in question or the tax losses pending to be applied from previous tax years.

6. Payroll tax

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

7. Special tax on production and services

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

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

The sale and importation of fossil fuels (propane, butane, gasoline, avgas, turbosine and other kerosene, diesel, fuel oil, oil coke, coal coke, mineral coal and other fossil fuels that include any other fuel derived from oil and mineral coal destined for a combustion process) will be subject to this tax as of fiscal year 2014. This tax can be paid by the delivery of carbon credits when these derive from projects developed in Mexico and endorsed by the United Nations. The federal government grants tax incentives on gasoline depending on the behavior of crude oil prices. When oil prices rise, it provides more incentives and imposes a higher special tax on production and services (IEPS). Conversely, when oil prices fall, it reduces the incentives and imposes a lower tax. This fiscal policy aims to stabilize gasoline prices in Mexico and avoid sudden price hikes by cushioning the impact of sudden increases in international oil prices. As of 2024, the government has significantly reduced tax incentives compared to 2022 and 2023, resulting in an increase in gasoline prices and tax revenue.

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

8. Mining fees

Holders of mining concessions will be subject to an annual "special mining fee" at a rate of 7.5% on the positive difference from reducing income originated by the sale of the extraction activity, as well as certain deductions pursuant to the ITL, except for

i. investments, excluding exploration and prospecting expenses

ii. interest accrued during the fiscal year, without any adjustment and default interest; and

iii. the deductible annual inflation adjustment.

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

9. Anti-Abuse Rule

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

The resolution following the tax audit as to whether a given transaction or structure lacks business reasons must be issued by a special committee comprising officials of the Secretaría de Hacienda y Crédito Público (**"Hacienda"**) and the SAT, and the taxpayer must be informed of it before the closing of the audit to allow them to rebut the assessment/presumptions regarding the lack of business reasons.

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

- Lack of business reasons based on facts and circumstances known at the time of the audit
- Lack of business reasons presumed when the quantifiable and expected economic benefit is lower than the tax benefit
- Multistep transaction lacks business reasons

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

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

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

10. Reportable transactions

Since January 2021, a requirement related to reportable transactions was included in the Mexican Federal Fiscal Code, which sets out tax advisers' obligation to disclose generalized reportable transactions or custom reportable transactions. In addition, some exceptions were included, in which the taxpayers will be responsible for disclosing a reportable transaction.

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

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

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

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

11. Subcontracting regime

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

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

Some of the relevant aspects of the Subcontracting Reform are as follows:

i. The subcontracting of personnel was prohibited (outsourcing, including the dual structure businesses or insourcing); consequently, many companies that previously subcontracted incorporated those personnel into the operating entity's payroll.

ii. Consequently, to limit employees' profit sharing (PTU) maximum liability, the amount of PTU that companies might pay to its employees was limited to a maximum of three months' salary, or the average PTU paid during the last three years, whichever is more favorable for the employee.

iii. The subcontracting of specialized services is allowed if the services are not related to the main corporate purpose or main economic activity of the beneficiary company and the activities of the headhunter companies were strictly regulated.

iv. The rendering and execution of specialized services is subject to registration before the Federal Ministry of Labor and Social Welfare (Secretaría del Trabajo y Previsión Social (STPS)). Additionally, specialized services providers must deliver periodic documentation to the beneficiary of the services to prove compliance with tax and social security obligations. Compliance with these obligations is verified by the STPS and the Social Security Institute, which may impose fines and collaborate with the tax authorities.

v. Payments for subcontracting of personnel overlapping with the main corporate purpose or economic activity of the beneficiary are not allowed as deductions for corporate income tax purposes, and the related VAT is not creditable.

vi. The recipients of specialized outsourcing services are jointly liable with the service providers in connection with any omitted taxes and/or social security contributions by the employer.

vii. Simulating schemes of specialized subcontracting services is considered a felony (tax fraud). The penalty for taxpayers that commit tax fraud is jail time (subject to criminal law rules and procedures).

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

International trade

1. International trade

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

2. Imports in general

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

Import duties and nontariff regulations and restrictions are determined based on the tariff classification (HTS code) of the merchandise. The HTS code of the merchandise is generally determined by the customs broker, authorized by the Ministry of Finance and Public Credit, considering the characteristics of the merchandise and the provisions of the General Import and Export Duties Law (Ley de los Impuestos Generales de Importación y de Exportación (LIGIE)).

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

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

Furthermore, on 15 August 2023, a decree was published through the DOF modifying the LIGIE to increase import duties on 392 tariff items from 5% to 25% ad valorem for products originating from countries that do not have a preferential or free trade agreement with Mexico. Some of the affected sectors include steel, textiles, footwear and chemicals, and this tariff increase will be in effect from 16 August 2023 until 31 July 2025.

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

3. General Importers' Registry

To import into Mexico, the good must be registered in the General Importers' Registry. For the import of certain types of goods, such as chemical products, cigars, footwear, textiles, hydrocarbons, steel products and automotive industry goods, among others, it is also necessary to register in the applicable specific sectors of the General Importers' Registry.

To register in the General Importers' Registry, the company must first be registered in the Federal Taxpayers' Registry (Registro Federal de Contribuyentes (RFC)) and have an electronic signature provided by the SAT. Additionally, its tax domicile must appear as "located" in the SAT registries, and it must demonstrate compliance with tax obligations, as well as indicate the license number of the customs broker(s) who will process the company's imports.

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

The requirements to obtain registration in the specific sectors of the General Importers' Registry will depend on the applicable sector.

The RGCE outlines the grounds for which a company may face suspension from the General Importers' Registry. There are more than 47 distinct causes, with new ones being continually introduced.

If a company is registered in the General Importers' Registry and is also authorized for specific sectors, any suspension from the General Importers' Registry will automatically extend to all other specific sectors. To reactivate the company's status, both the General Importers' Registry and the specific sectors must undergo a thorough compliance process, ensuring adherence to all corresponding requirements in the first application.

These modifications and regulations emphasize and underscore the importance of maintaining strict compliance and accurate recordkeeping for businesses engaged in international trade.

4. Nontariff regulations and restrictions

To import goods, it is also necessary to verify and, if applicable, comply with corresponding nontariff regulations and restrictions (NTRRs), which include permits and notices on the prior importation of goods, such as permits and/or sanitary certificates, permits to import sensitive goods, zoosanitary certificates, environmental certificates, etc. These are processed before the different ministries, as applicable.

In addition, it is important to consider whether technical, commercial information or Mexican Official Standards (Norma Oficial Mexicana (NOMs)) are applicable. We suggest reviewing these types of regulations prior to importation, since in most cases, it is necessary to demonstrate compliance upon customs clearance.

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

5. Customs duties and other applicable taxes

For customs clearance, it is essential to pay customs-related taxes, which may include a general import duty, a customs processing fee (derecho de trámite aduanero (DTA)), VAT, excise tax (IEPS), and in some cases, antidumping or countervailing duties, depending on the goods in question.

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

6. Foreign trade promotion programs

The main purpose of the foreign trade promotion programs is to encourage foreign investment in Mexico and increase the competitiveness of companies entering the world market. Among the promotion programs in Mexico, the following stand out:

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

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

The IMMEX program is authorized by the SE through its General Direction of Foreign Trade Facilitation. Among the requirements to be accepted into this program, the applicant must evidence having the necessary infrastructure to carry out its industrial processes and/or exportation services, including information on employees directly hired, and the legal use and possession of the place where the applicant will carry out the process or service.

b. Registration in the company's certification scheme

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

i. Modality VAT/excise tax

Modality VAT and/or excise tax are complementary to the IMMEX program, and its purpose is to grant a tax credit equivalent to the amount caused by the concept of VAT and/or excise tax for the temporarily imported goods. To secure this modality, it is essential to previously be authorized in an IMMEX program and to comply with the requirements set forth by the RGCE.

Toward the end of 2024, the SAT imposed on VAT-certified companies the obligation to grant the SAT online access to its customs inventory control systems (Annex 24 — Section C), including information on imports, exports, consumptions/discharges and open balances. According to regulations, online access must allow the SAT to revise and download information from companies' enterprise resource planning (ERP) system. Without this certification, the importer must pay the VAT levied upon the temporary importation of merchandise under the shelter of the IMMEX program.

7. SAT — VAT and Excise Tax Certification.

ii. Authorized Economic Operator

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

This modality, within the company's certification scheme, is the equivalent to the US' Customs Trade Partnership Against Terrorism (C-TPAT), and the requirements for its approval are related to the security in the supply chain, the production and the exportation of the merchandise.

c. Sectorial Promotion Program

Sectorial Promotion Programs (PROSECs) enable importation, with preferential duty rates, of certain materials and machinery, regardless of their country of origin, that will be used in the production of specific finished goods, also regardless of whether the finished good will remain in national territory or be exported.[8]

7. Mexico's FTAs

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

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

Currently, Mexico has 13 FTAs in force, giving it preferential access to 50 countries,[9] including the US and Canada, through the new FTA executed between Mexico and the abovementioned countries (USMCA); Colombia and Venezuela in 1995 (only Colombia since 2006); Chile in 1999; Israel in 2000; the EU in 2000; Norway, Switzerland, Iceland and Liechtenstein in 2001 (EFTA); Uruguay in 2004; Japan in 2005; Peru in 2012; Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua[10] in 2012 and 2013;[11] Panama in 2015; and the Pacific Alliance, Chile, Colombia and Peru, in 2016.[12] In addition to the above, Mexico signed the CPTPP in 2018 and now has preferential access to import from and export to Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, New Zealand, Peru, Singapore and Vietnam.

The USMCA became effective for the US, Mexico and Canada on 1 July 2020. Regarding the relevant changes of this agreement in relation to the previous one (NAFTA), there are significant changes in the rules of origin of the automotive industry; increased barriers to access to generic drugs in the pharmaceutical sector; in labor matters, a commitment to adopt labor practices as established in the International Labour Organization and a rapid response labor mechanism to address complaints of breaches to freedom of association rights; and the addition of a chapter on electronic commerce and one on anti-corruption matters, among others.[13]

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

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

On 17 February 2023, the SE published in the DOF a list of goods subject to regulation by the STPS and stated that it prohibits the importation of goods produced with forced labor.[14] This regulation became effective on 18 May 2023. The Forced Labor Regulation empowers the STPS to initiate procedures to determine if forced labor was used in the production of goods. If so, it will publish these findings as resolutions in the STPS portal, and goods covered by such resolutions will be prohibited from entering Mexico.

The first joint review of the USMCA will happen in July 2026. In 2025, the three parties will have domestic reviews of regulations, as well as consultations with the private sector to begin defining relevant topics of discussion.

It is important to mention that as a result of the UK's withdrawal from the European Union, Mexico and the UK executed an agreement to continue trade, by which both parties maintain the preferential trade regime currently in force under the EUFTA, while a new and comprehensive FTA is negotiated between Mexico and the UK.

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

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

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

8. Foreign Trade Law

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

14. DOF: 17 February 2023.
15. Comercio Exterior, Países con Tratados y Acuerdos firmados con México.
16. Comercio Exterior/Países con Tratados y Acuerdos firmados con México/Acuerdos Internales/APPRIs.
17. Comercio Exterior, Países con Tratados y Acuerdos firmados con México.

9. Customs Law

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

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

10. ANAM

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

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

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

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

11. Bill of Lading Supplement (Complemento Carta Porte)

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

It is important to bear in mind that the persons obligated to issue an electronic invoice with a Bill of Lading Supplement are

i. those who provide transportation services using their vehicles

ii. the owner of vehicles and merchandise that is transported in them; and

iii. the intermediary or transport agent that provides logistics services for the transfer of merchandise.

The above information must be transmitted in the corresponding customs systems in accordance with the RGCE for customs clearance. At all times, the carrier must carry such documentation through a printed copy or in an electronic invoice digital file.

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

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

Labor law

1. Labor law

The Mexican Federal Labor Law (FLL) regulates employment relationships in Mexico. The FLL applies to all individuals providing personal subordinated services within the Mexican territory, regardless of nationality or the place in which their employment agreement was executed.

2. Hiring modalities

The execution of a labor agreement for an indefinite period, which is the norm in Mexico, implies that the labor relationship will be permanent. This type of contract can only be terminated or rescinded if the causes for termination provided in the FLL exist. These are discussed in Section 4 below.

In addition to indefinite-period agreements, there are three other hiring modalities.

a. Trial period

A trial period allows an employer to evaluate whether an employee meets the job requirements and has the necessary knowledge. This period must be included in the employment contract and cannot exceed 30 days, though it can be extended to 180 days for high-level or technical positions. If the employee does not meet the job requirements by the end of the trial period, the employer, considering the opinion of the Joint Committee of Productivity, Training and Education, can terminate the employment relationship without liability (i.e., severance).

b. Training contract

A training contract allows an employee to acquire the necessary knowledge and skills for the job. It can last up to three months, with a possible extension to six months for specific cases, similar to high-level or technical positions. If the employee does not meet the job requirements by the end of the training period, the employer, considering the opinion of the Joint Committee of Productivity, Training and Education, can terminate the employment relationship without liability (i.e., severance).

c. Seasonal work

This is a new hiring modality within indefinite-period contracts. The employment relationship is indefinite except for discontinued activities, such as seasonal work or activities not required year-round. During the offseason, the employee's obligation to work and the employer's obligation to pay wages are suspended. These and other obligations are reestablished in the next seasonal period.

3. Employees' rights

a. Christmas bonus

All employers must pay their employees a Christmas bonus equal to at least 15 days' wages, payable before 20 December of each year.

b. Mandatory rest days

The FLL mandates that employees are entitled to paid rest days, which employers must observe. If an employee works on a mandatory paid holiday, they must be paid double their regular wage. The mandatory paid holidays in Mexico are as follows:

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

c. Vacation and vacation premium

Employees are entitled to the following paid vacation:

Years of service	Paid vacation days
1	12
2	14
3	16
4	18
5	20
6 to 10	22
11 to 15	24
16 to 20	26
21 to 25	28
26 to 30	30
31 to 25	32

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

d. Profit sharing

Starting from the second year of operation, employers must distribute 10% of their pretax profits among employees within 60 days after filing their year-end income tax return. The profit sharing amount is divided as follows:

i. 50% based on the number of days worked by each employee during the year

ii. 50% based on the employees' wages

In accordance with the FLL, general directors, managers and administrators are not entitled to profit sharing. In 2021, a reform introduced a cap on profit sharing. The maximum amount is either three months of the employee's salary or the average profit sharing received over the past three years, whichever is higher.

e. Training and instruction

Employers are legally required to provide training and instruction to their employees. They must have a training program available at the workplace and be able to submit it to the Ministry of Labor if requested. Companies with more than 50 employees must establish a Joint Committee of Productivity, Training and Education, consisting of an equal number of employee representatives and employer representatives. This committee is responsible for implementing training programs, and its members' roles must be clearly defined in its incorporation deed.

f. Housing contributions

The FLL requires employers to pay an amount equal to 5% of the employee's wages to the National Housing Fund Institute (Instituto del Fondo Nacional de la Vivienda para los Trabajadores or **"Infonavit"**). Employers must deposit these contributions into a special account at a local bank so that the Infonavit can distribute the contributions into each employee's housing account.

g. Minimum wage

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

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

h. Overtime

Employers in Mexico can require employees to work up to 48 hours per week on the day shift, 42 hours on the night shift and 45 hours on the mixed shift without paying overtime. Overtime pay is 200% of the standard rate for the first nine hours and 300% for any additional hours. Employers cannot require more than three hours of overtime per day or more than three times per week.

Work hours can be distributed throughout the week as long as this has been agreed in writing. Employees must have at least one paid full day of rest per week. Sunday work requires a 25% premium, in addition to any overtime pay. If an employee works more than 57 hours a week, the employer may face penalties.

Currently, the Mexican Congress is considering a reform to reduce these work-shift limits.

i. Health and safety

Employers must ensure a safe and sanitary work environment. They are required to establish a health and safety committee to investigate causes of illnesses and accidents and propose preventive measures. Additionally, employers must comply with the Federal Health and Safety Regulations and various NOMs, which cover issues like fire prevention, toxic substance exposure and employee protective gear.

j. Paid maternity leave

Employers must provide female employees with fully paid maternity leave of six weeks before and six weeks after the delivery date. After this 12-week period, employers must offer the same position back, including accrued rights like seniority and vacation pay. Employees can move up to four weeks from the pre-birth to the post-birth period. For adoption, maternity leave is six weeks after receiving the infant.

k. Paid paternity leave

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

l. Employer social security contributions

See the "Social security" section below.

m. Additional nonmandatory benefits

Employers can choose to offer benefits beyond the legal minimum. These may include savings funds, grocery vouchers, private medical insurance, life insurance, punctuality and attendance bonuses, cafeteria and transportation subsidies, and productivity bonuses. Many employers in Mexico provide these additional benefits based on market conditions and their financial situation. Offering these benefits often comes with fiscal and social security advantages.

4. Severance payments in the case of termination without cause

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

Based on the above, if the employer decides to terminate the employment relationship without cause, it must obtain the employee's consent and pay the following mandatory severance:

i. Three months of daily aggregate salary (constitutional severance)

ii. Twenty days of daily aggregate salary per year of service

iii. Seniority premium (as mentioned in the "Seniority premium" section)

iv. Outstanding fringe benefits upon termination

The severance is calculated based on the employee's aggregate salary, which includes base salary and benefits from the last 12 months, such as bonuses, incentives, commissions, premiums, allowances and any other benefit granted to the employee, either in cash or in kind, as consideration for the services rendered.

Employers must ensure accurate calculation of the daily aggregate salary to avoid claims for salary differences. If an employee refuses to terminate the relationship, they can file a labor claim with the labor court to request either their reinstatement or the payment of the constitutional severance (three months of aggregate salary). If the employee prevails in their legal action, they are also entitled to back wages from the dismissal date until the payment date. Back wages are limited to a maximum of 12 months. After this period, interest at a 2% monthly rate, applied to 15 months of wages, will be capitalized upon payment.

5. Payments derived from dismissal for cause

If an employer terminates an employee for cause, the employee is entitled to the seniority premium (as mentioned in the "Seniority premium" section) and outstanding fringe benefits upon termination.

To dismiss an employee for cause, an employer must do the following:

i. Be able to prove, in the labor court if necessary and with irrefutable evidence, that the dismissal was for a statutorily defined "just cause" in the FLL

ii. Give the employee, directly or through the labor court, prompt written notice of the dismissal, specifying the grounds for dismissal

The FLL lists specific causes for dismissal without severance pay, including immoral conduct, discrimination, bullying, sexual harassment, absenteeism (more than three absences in 30 days), unauthorized disclosure of trade secrets, refusal to follow health and safety procedures, insubordination, and conduct detrimental to the employer, clients or providers.

Dismissed employees can file a labor claim before the labor court for unfair dismissal, seeking either reinstatement or the payment of the constitutional severance (three months of aggregate salary). If the employee prevails in their legal action, they would also be entitled to back wages.

For specific positions and under certain circumstances (for example, "trust employees"[18]), the FLL establishes that the employer can refuse reinstatement and instead pay 20 days of aggregate salary per year of service, including the proportional part of this amount.

Based on the above, before terminating an employee for cause, the employer should analyze whether there is a cause for termination as defined by the FLL, have conclusive evidence to prove the grounds for termination and be within the 30-day statute of limitations for dismissal.

6. Constructive dismissal by the employee

An employee can terminate their employment and receive severance pay (referred to in the "Severance payment in the case of termination without cause" section above) if the employer commits certain acts specified in the FLL. These acts include reducing the employee's salary or benefits, affecting the employee's dignity and allowing unsafe working conditions, as well as discrimination, bullying and sexual harassment.

7. Termination of the individual employment relationship

The FLL provides that a labor relationship may be terminated without either party being liable under certain circumstances, including the following:

i. The parties reach a mutual agreement.

ii. The employee dies.

iii. A specific job is concluded.

iv. The employee has a physical or mental incapacity or disability that prevents them from providing services.

In these cases, the employee is only entitled to outstanding fringe benefits. If the termination is due to the employee's physical or mental incapacity or disability, the employer must also pay the seniority premium (see the "Seniority premium" section) and one month of salary.

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

8. Seniority premium

The seniority premium referred to in the "Severance payment in the case of termination without cause," "Payments derived from dismissal for cause" and "Termination of the individual employment relationship" sections above is equal to 12 days of salary per each year of service rendered.

If the employee's salary exceeds twice the minimum wage, the calculation is capped at two minimum wages. This premium must be paid to the following employees:

i. Employees who voluntarily resign from the employment relationship after completing 15 years of employment

ii. Employees who terminate the employment relationship with liability for the employer

iii. Employees who are dismissed by the employer with or without "just cause"

iv. Employees who die while still employed, in which case their beneficiaries receive the seniority premium

v. Employees who acquire a physical or mental incapacity or disability that does not derive from a work accident

Employers must consider the local workforce's culture, needs and perspectives before establishing a business. The interpretation of FLL provisions depends on labor authorities and federal courts.

9. Outsourcing regime

The FLL provides a legal framework for outsourcing, recently reformed to prohibit subcontracting of personnel services. This means that companies cannot provide or make personnel available to another party. Intermediary agencies involved in recruitment and selection are not considered employers under this rule. The FLL allows shared (back office) services companies.

Outsourcing specialized services or works is permitted if they are not part of the core business activities or the main economic activity of the service recipient. The outsourcing entity must have a registry issued by the Ministry of Labor called the Registry of Providers of Specialized Services or Works (Registro de Prestadoras de Servicios Especializados u Obras Especializadas). The service contract must detail the purpose of the outsourcing and the approximate number of employees involved. The FLL now includes joint liability to ensure that both parties meet all the employment obligations.

The reason for outsourcing services or executing specialized works must be included in detail in the services contract executed between the parties, as well as the approximate number of employees that will be made available as a result of rendering the required services. Additionally, the joint liability concept has now been formally incorporated into the FLL, with the aim of properly enforcing all employment obligations between the parties.

10. Collective bargaining agreement

The 2019 labor reform significantly strengthened union selection and freedom of association.

With this reform, the labor boards were replaced by labor tribunals that are part of the Judicial Power of the Federation and the Federal Center for Conciliation and Labor Registry, an organization in charge of supervising and guiding important functions such as the following:

i. Conciliating both individual and collective labor disputes

ii. Issuing the certificate of representation, an important document that is needed for a union to sign a collective contract

iii. Registering all collective labor agreements and internal labor regulations

This recent change in collective bargaining agreements is significant because the center oversees both conciliatory and registry functions. For the registry part, the center does the following:

i. Verifies union democracy processes

ii. Issues the certificate of representation for initial collective contracts and before strikes

iii. Reviews, approves and deposits internal work regulations

For the conciliatory function, the center is a decentralized public body that handles the mandatory conciliation procedure employees and employers must complete before going to labor courts.

11. Social security

The Social Security Law was enacted on 31 January 1942. Under this law, creating an employment relationship automatically entitles employees to social security benefits. These benefits are funded by contributions from both the employer and the employee, based on the company's risk factor. Employers must register their employees in the Mandatory Regime of Social Security with the Mexican Institute of Social Security. By doing so, the employee is covered by the different types of insurance and is entitled to receive the benefits in cash and in kind offered by these types of insurance: (i) work-related risks; (ii) health and maternity insurance; (iii) disability pension and life insurance; (iv) retirement and old age pension; and (v) childcare and social benefits.

The Mexican Institute of Social Security provides social security benefits and releases employers from liability for work-related accidents or illnesses unless they have not complied with their registration and payment obligations. If employers submit false information or fail to fulfill their obligations, the Mexican Institute of Social Security will still offer benefits to employees but will seek reimbursement and impose penalties on the employer. Social security benefits are available at Mexican Institute of Social Security facilities across Mexico.

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

- Work tools
- Savings funds, as long as they include matching contributions by the employer and the employee, and the employee does not cash in more than twice per year
- Contributions paid by the employers for social or union purposes
- Additional contributions made by the employer to the retirement and old age pension
- Contributions made by the employer to the Infonavit
- Profit sharing amounts paid to the employees
- Food and shelter, provided the employee pays at least 20% of the UMA[19]
- Food baskets, as long as they do not exceed 40% of the UMA
- Attendance and punctuality bonuses
- Overtime pay, unless it exceeds the overtime allowed by the FLL

12. Teleworking

In 2023, the Ministry of Labor published Official Mexican Standard NOM-037-STPS-2023 (**"NOM 037"**) in compliance with the January 2021 reform to the FLL. NOM 037 establishes health and safety conditions for teleworkers to prevent accidents and illnesses and promote a safe and healthy work environment. This applies to all workplaces with teleworkers, meaning those who perform more than 40% of their workday and activities remotely.

Employers' obligations under NOM 037 include maintaining an updated list of teleworkers, establishing a written telework policy, having a checklist of health and safety conditions, informing employees about telework-related risks, and providing necessary supplies and training. Employers must also ensure data protection, conduct medical exams and facilitate the return to on-site work if needed. Teleworkers must comply with the telework policy, inform employers of any changes in safety conditions, maintain equipment, and participate in risk information and training processes. They must also notify employers of any work-related accidents and changes in their work location.

13. Recent labor reforms

a. Digital platforms

On 24 December 2024, a decree was published amending the FLL, effective 22 June 2025. This amendment introduces new rules for digital platform employees, defining them as those providing remunerated, subordinated services through digital platforms. Employees must earn at least one monthly minimum wage[20] to be considered employees; otherwise, they are independent employees. Companies must implement an algorithmic work management policy, register employees with social security, pay housing contributions, provide training and ensure data privacy. Employees can define their working hours, and employment ends if they stop working for 30 consecutive days. Salaries must include various benefits and be paid weekly. Employees are entitled to profit sharing if they work over 288 hours annually.

19. As of 2025, the daily value of the UMA is of MXN 113.14.
20. As of 2025, the monthly minimum wage is MXN 8,364 and, for the Northern Border Free Zone, the monthly minimum wage is MXN 12,596.

b. Chair Law

On 19 December 2024, the Chair Law was published in the DOF, amending the FLL. Effective 17 June 2025, this reform ensures employees' right to rest on a chair with a backrest, prohibiting employers from requiring employees to stand throughout their entire shift. If providing seating at the workstation is not feasible, designated areas should be equipped with seats or chairs for periodic rests. Noncompliance can result in fines ranging from 250 to 2,500 times[21] the UMA and may lead to suspension of activities for repeated offenses.

c. Gender equality

On 15 November 2024, a constitutional reform focused on gender equality was published in the DOF. This reform aims to adapt the 1917 Constitution to current social and political needs, emphasizing the importance of gender equality and the elimination of discrimination and violence against women. Key objectives of the reform include guaranteeing substantive equality in rights and opportunities for women, ensuring their right to live free from violence, incorporating a gender perspective in security and justice, creating specialized prosecutors for gender-based violence and eradicating the gender pay gap. Employers must ensure equal pay for equal work, regardless of sex, gender or nationality. To comply, employers should conduct salary audits, implement training programs for women and create inclusive work environments.

---

21. As of 2025, the fines would be between MXN 28,285 and MXN 282,850.

Environmental

1. Labor law

Mexico has enacted numerous laws, regulations and standards in the area of environmental protection, addressing a diverse range of issues such as environmental impact and risk; flora and fauna protection; prevention and control of air, water and soil pollution; environmental liability; soil remediation; and hazardous substance handling and disposal.

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

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

2. Environmental authorities

The Ministry of Environment and National Resources (Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT)) is the federal authority responsible for setting and overseeing national policy for environmental protection. It is also tasked with enacting NOMs that establish (i) pollutant limits for air emissions and wastewater discharges; and (ii) criteria for classifying waste as hazardous. The Federal Bureau of Environmental Protection (Procuraduría Federal de Protección al Ambiente (PROFEPA)), which is a technically autonomous agency within SEMARNAT, is in charge of carrying out enforcement activities. Meanwhile, the National Water Commission (Comisión Nacional del Agua (CONAGUA)) is the agency in charge of overseeing all aspects of water management in Mexico.

With the energy reform approved in 2014, a new environmental authority — the National Industrial Safety and Environmental Protection Agency for the Hydrocarbons Sector (Agencia de Seguridad, Energía y Ambiente (ASEA)) — was created. This agency has the authority to regulate all activities of the sector, including the exploration and exploitation of oil and gas, as well as activities related to petrochemicals and the transportation and distribution of hydrocarbons.

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

3. Environmental impact permitting

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

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

If the activity to be carried out is not federally regulated, the EIA must be secured from the corresponding state or municipal environmental authority in accordance with the applicable municipal or state law.

4. Prevention and control of air pollution

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

5. Water

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

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

In addition, wastewater must comply with the water quality limits established by applicable NOMs.

6. Hazardous waste management

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

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

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

7. Soil pollution

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

To remediate a contaminated site, monitoring, sampling and remediation protocols established by the Waste Law, its regulations and applicable NOMs must be followed.

8. Community right to know

As a result of the amendments to the Environmental Protection Law, SEMARNAT created a public pollutants registry composed of data furnished by individuals and entities that:

i. emit pollutants into the air, soil or water; and

i. handle hazardous substances.

This means that all information, subject to federal jurisdiction, regarding a facility's air emissions, wastewater discharges and waste stream is made public. SEMARNAT is currently negotiating collaboration agreements with many states and municipalities in order to expand the information to be included in the registry. This is consistent with the Environmental Protection Law, which allows any person the right to receive environmental information from SEMARNAT as well as from state or municipal authorities.

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

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

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

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

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

a. Who has a right to file a collective action

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

ii. i. SEMARNAT, PROFEPA or ASEA

 iii. the Federal Bureau of Consumer Protection

 iv. the National Commission for the Protection and Defense of Users of Financial Services; and

 v. the Federal Competition Commission

ii. A common representative of a community composed of at least 30 members

iii. Civil nonprofit associations (such as nongovernmental organizations) legally incorporated at least one year prior to filing the collective action, whose corporate purpose includes the promotion or defense of rights and interests in any of the areas detailed above, and that comply with the requirements established in the Federal Civil Procedure Code

iv. The attorney general of the republic

b. Statute of limitations

The statute of limitations for filing collective actions is 12 years from the moment when harm or injury was caused. However, if harm or injury has continuous or ongoing effects, the term will begin from the last day (or most recent day) in which the harm occurred (many acts or omissions that cause environmental harm are of a continuous nature).

c. Types of collective actions

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

d. Legitimate causes to bring a collective action

The following are legitimate causes to bring a collective action before a federal civil court:

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

e. Settlement arrangements

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

f. Precautionary measures (injunctive relief)

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

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

g. Rulings

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

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

10. Environmental liability

On 7 June 2013, the Environmental Liability Law (ELL) was published in the DOF, and it officially entered into force on 6 July 2013.

a. Implications of the ELL

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

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

b. Subjective and objective liability

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

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

Under the Federal Civil Code, the ELL states that no environmental harm will be deemed caused if losses or damages are not adverse in the following instances:

i. They were expressly manifested by the responsible party and explicitly identified in their scope, as well as evaluated, mitigated and compensated through specific conditions, in addition to being previously authorized by the SEMARNAT either as part of an environmental impact, land-use change procedure or any other permitting process.

ii. They do not exceed the limits established by environmental laws and applicable Mexican standards.

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

c. Economic penalties

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

i. 1300 to 50,000 times the minimum wage in Mexico City if the party responsible is an individual

ii. 1,000 to 600,000 times the minimum wage in Mexico City if the party responsible is an entity

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

- The entity has not been sentenced under the ELL and/or is not a repeat offender.
- None of its employees, representatives or directors have been sentenced for crimes against the environment.
- During a term of at least three years prior to the conduct that caused environmental harm, the entity had an internal mechanism to permanently verify compliance with environmental laws and licensing requirements.
- There is a financial guarantee in place (such as a bond or insurance) to cover against environmental harm.
- It holds one of the audit certificates established by the General Law of Ecological Balance and Environmental Protection (such as a "clean industry certificate" issued once an environmental audit has been successfully carried out).

A judge may order whoever is found liable for causing environmental harm to repair such harm. If this is not possible, the judge may require the implementation of compensatory measures, either partially or totally, as well as the necessary actions to prevent further harm.

d. Statute of limitations

As stated above, the statute of limitations for bringing an action for environmental harm is 12 years from the occurrence of the harm.

e. Legal standing

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

i. People living near the affected area

ii. Private nonprofit Mexican entities incorporated for the purpose of protecting the environment, when acting on behalf of an inhabitant of a community near the affected area

iii. The federal government through PROFEPA

iv. State environmental protection bureaus and agencies

f. Liability for environmental harm

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

Officers, employees and agents are generally liable for the following:

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

g. Shareholder or parent company liability

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

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

11. Climate change and emissions trading

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

The Climate Change Law sets an aspirational 30% greenhouse gas reduction target by 2020, increasing to 50% by 2050, compared to the emission levels in the year 2000. However, this target has not been achieved and the current government does not seem to be inclined to adopt actions to meet GHG reduction targets. According to the Climate Change Law, GHG reduction targets may be achieved if there is an international regime that provides for financial and technological support afforded by developed countries.

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

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

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

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

Intellectual property

1. Intellectual property

Mexico is part of the approved system of intellectual and industrial property, as it has signed the most relevant treaties on the matter, such as the Paris Convention for the Protection of Industrial Property; the Berne Convention for the Protection of Literary and Artistic Works; the Patent Cooperation Treaty; the Madrid Protocol; the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization (TRIPS); as well as commercial agreements crucial for the protection and enforcement of intellectual property agreements, such as the USMCA.

In 2020, Mexico updated its legislation on industrial property, issuing the Federal Law for the Protection of Industrial Property (Ley Federal de Protección a la Propiedad Industrial (LFPPI)) to replace the 30-year-old Industrial Property Law. Similarly, the Mexican Federal Congress amended the Federal Copyright Law (Ley Federal del Derecho de Autor (LFDA)).

In accordance with international standards, the Mexican intellectual property system is divided into two categories: industrial property and copyright. The first, regulated by the LFPPI, involves patents, industrial designs, utility models, industrial secrets, trademarks, commercial notices (slogans), designations of origin, as well as protection and unfair competition related to industrial property rights. Meanwhile, copyright is regulated by the LFDA.

In the following sections we will provide current relevant topics regarding these areas of law.

2. Industrial property

a. Protection of registered trademarks

i. Trademark registration

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

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

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

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

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

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

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

ii. Madrid Protocol

Mexico is member of the Madrid Protocol, which allows for international trademark registrations to be filed through this system.

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

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

iii. Opposition procedure

Mexico first adopted the opposition procedure in 2016. In 2020, it amended its procedural approach to become more adversarial, resembling litigation. Once the trademark application is submitted, the IMPI publishes the application in the Industrial Property Gazette for opposition purposes, approximately 10 days after application's filing date.

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

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

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

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

iv. Declaration of Use

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

If this declaration is not filed, the registration will automatically expire. If the use is not declared in all the protected products or services, it will be understood as a limitation of the protection. If the trademark is not used within three years following its registration but the titleholder is interested in maintaining its trademark, the best practice is to allow the senior registration to lapse and file a new application. However, other strategies may be implemented on a case-by-case basis.

It is important to consider that trademarks registered in Mexico filed under Madrid Protocol are also subject to the mandatory Declaration of Use. As such, it is recommended to appoint a Mexican counsel to monitor and take over legal representation for international registrations extended to Mexico.

v. Renewal

A trademark registration in Mexico is valid for 10 years and can be renewed for subsequent 10-year periods upon expiration. For trademark registrations granted before 5 November 2020, the 10-year period is calculated from the filing date. For registrations granted after this date, the 10-year period is calculated from the date the trademark registration is granted.

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

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

vi. Geographical indications and appellations of origin

Mexican law protects and recognizes of appellations of origin and geographical indications. The most common appellations of origin in Mexico are Tequila and Mezcal, which follow special regulations in accordance with Mexican standards and are monitored by regulatory councils to ensure the products' quality.

vii. Non-traditional trademarks

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

viii. Famous and well-known brands

A trademark is considered to be well known in Mexico when a segment of the public or commercial circles in the country recognize the trademark due to domestic or international commercial activities carried out by a person who uses that trademark in connection with their products or services, or as a result of the promotion or advertising of the trademark.

On the other hand, a trademark is famous in Mexico if it is known by the majority of consumers, or if it holds significant diffusion or recognition in global commerce.

In practice, obtaining a declaration of a famous or well-known trademark strengthens the position and arguments in oppositions, invalidation and cancellation actions, as well as general brand enforcement actions. We have observed that the IMPI grants famous or well-known trademarks an additional layer of protection, which is useful in deterring unfair competition practices and bad faith applications, as well as in trademark infringement cases.

ix. Nullity and cancellation of trademark registrations

The LFPPI identifies three general grounds for challenging a trademark registration: invalidation actions, cancellation actions based on non-use, and cancellation due to loss of distinctiveness due to genericness.

Invalidation actions can be based in the following grounds:

i. when a trademark is granted against the law

ii. when there is previous use in Mexico or abroad of the same or a confusingly similar mark

iii. when the titleholder does not prove the date of first use mentioned in the application (defendant has the burden of proof)

iv. when it has been granted by error or difference of appreciation by the trademark office due to the prior existence of a confusingly similar trademark

v. when it has been registered by an agent or distributor of a trademark without proper authorization; and

vi. when it has been obtained in bad faith.

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

Cancellation action based on non-use proceeds against those registrations that have not been used within the last three years from the filing date of the cancellation action. The titleholder has the burden of proving actual use of the trademark for the goods and services protected.

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

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

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

x. Infringement actions

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

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

During these infringement procedures, there is a possibility to request injunctive relief to stop the ongoing infringement.

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

Once a favorable resolution is obtained in the infringement procedure, there is the possibility of initiating a new procedure to collect damages, which can be before the IMPI or a civil judge. The plaintiff has the right to choose jurisdiction at this stage, unlike in the infringement procedure.

The LFPPI sets a minimum damages threshold, starting at no less than 40% of the legitimate value of the offending product or service.

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

b. Trade secrets

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

The trade secrets regime in Mexico is quite complex due to the formal standard statutorily required and its application in practice before the IMPI and judges. Plaintiffs most often fail to sufficiently adopt strong measures and mechanisms to demonstrate prior notice and adequate protection of confidentiality to trigger the claim's admission, as well as to demonstrate that a trade secret exists and can be enforced.

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

Trade secret protection heavily relies on the owner's proactivity and creativity to develop and implement a compliance culture within the company. Standard actions to protect trade secrets include, but are not limited to confidentiality clauses, nondisclosure agreements, employee and vendor trainings and policies designed to timely inform and protect trade secrets, as well as regular updates to these mechanisms, as necessary.

c. Protection of registered trademarks

i. Patent practice

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

To be awarded protection as a patent, an invention must

i. be new,

ii. be a result of an inventive step and

iii. potentially be industrially applicable.

Although patents adhere to the principle of territoriality, the owner of a foreign patent can secure protection in Mexico by filing an application that claims priority rights over a foreign application during the term provided by the Paris Convention (12 months from the priority filing date). Alternatively, protection can be secured by applying for a National Phase entry in Mexico if the foreign application was filed before the World Intellectual Property Organization (WIPO) under the Treaty of Patent Cooperation (PCT) (30 months from the priority filing date).

Under the LFPPI, titleholders of pending or granted Mexican patents may license or transfer their rights. These ownership changes must be recorded before the IMPI to be effective against third parties.

ii. Patent Prosecution Highway Programs

Mexico participates in the Patent Prosecution Highway (PPH) Programs with countries like the United States, Spain, Japan, China and South Korea. The PPH program allows for considerably reduced substantive examination timeframes of patent applications in Mexico by aligning the claims of a Mexican application with those granted by a foreign country that has a PPH agreement with Mexico. The PPH must be requested before substantive examination of a patent application begins.

In addition, from the end of 2023, the Accelerated Patent Grant Agreement (APG) is available to expedite the granting of Mexican applications. It is possible to apply to the APG if the application has a corresponding patent granted (published) by the United States Patent and Trademark Office (USPTO). APG can even be requested after examination has begun and before the response to the third official action. Compared to the PPH, a Mexican application has a higher chance of being granted with the APG by adapting the claims to those granted by the USPTO.

iii. Utility models and industrial designs

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

Industrial designs, meanwhile, are divided into the following:

a. Industrial drawings, which is defined as any figure, line or color combination embedded into an industrial product with ornamental purposes

b. Industrial models, which is defined as three-dimensional shapes used as pattern for the manufacture of industrial products and which have a unique appearance and not involve technical effects

The term of protection for industrial designs is five years, renewable for additional five-year periods up to a maximum of 25 years.

Similar to the Madrid Protocol's implementation in 2016, Mexico has joined the Hague Agreement regarding the international deposit of Industrial Designs or Models. The international treaty aims to simplify the prosecution of industrial design applications for both national and foreign titleholders.

3. Copyright

Although the LFDA establishes a procedure to register works in Mexico, a copyright does not require registration to ensure copyright protection. However, it is highly recommended to submit an application to register a copyright as the registration certificate would be helpful evidence in a potential action. This is particularly important because Mexican authorities tend to be more formalistic in copyright infringement claims, especially concerning copyright ownership.

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

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

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

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

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

It is worth mentioning that the last amendment to the LFDA recognizes the existence of a safe harbor for internet service providers and application providers or online platforms. Therefore, these entities are not liable for the content uploaded by their users, provided that they comply with certain requirements, including, among others:

i. not taking part in or directing the infringement; and

ii. maintaining mechanisms to identify possible infringements and take them down (notice and take down mechanisms).

Platforms must take down the allegedly infringing content, as soon as they are made aware of the same, taking reasonable measures for that content not to be uploaded again, which can be through policies, algorithms or other technological measures. Nevertheless, internet service providers are not obligated to supervise or monitor their systems or networks to actively search for possible copyright or related rights violations occurring online. However, they may proactively monitor to identify content that violates human dignity, is intended to nullify or impair rights and freedoms, and encourages or advocates violence or any crime.

Real estate

1. Introduction

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

2. Laws applicable to real estate transactions

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

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

3. Categories of real property

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

a. Private property

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

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

b. Ejido property

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

All Ejido properties are inalienable and not subject to liens or attachments. Only through a complex and formal legal procedure may an Ejido parcel be liberated of the Ejido property regime and converted into private property. All Ejido property is recorded before the National Agrarian Registry (Registro Agrario Nacional (RAN)). If it is liberated from the Ejido regime, the land is registered before the Public Registry of Property in the appropriate jurisdiction and becomes subject to civil law provisions (as opposed to agrarian law provisions).

c. Communal property

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

4. Foreign investment in real estate

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

5. Limitations on acquisition of property within the Restricted Zone

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

i. The real estate in trust had to be used exclusively to carry out tourism or industrial activities.

ii. The companies engaged in the above activities had to be registered with the Foreign Investment Registry.

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

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

6. Limitations on acquisition of property outside the Restricted Zone

Mexican law permits foreign individuals to acquire dominion or title over land and over mining and water concession rights outside of the Restricted Zone under certain conditions. Individuals may acquire direct title over land and over mining and water concession rights by obtaining a special permit from the SRE and by agreeing to what is known as the "Calvo Clause."[22]

7. Subsoil rights

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

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

In connection to the above and pursuant to the terms of the Mexican Hydrocarbons Law and its regulations, for the exploration and production of petroleum activities, the contractors or entitlement holders (**"Interested Party"**) must negotiate the terms, conditions and the consideration for using, enjoying or encumbering lands, property or rights necessary to perform such activities with the owner of the land, or with the holder(s) of the rights or assets (**"Owner"**). The negotiation will be carried out according to the following process:[23]

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

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

iii. The Interested Party must notify the Ministry of Energy (Secretaría de Energía (SENER)) and the Ministry of Agrarian, Territorial and Urban Development (Secretaría de Desarrollo Agrario, Territorial y Urbano (SEDATU)) about the negotiations with the Owner.

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

v. The consideration payable to the Owner should cover

    i. the payment for affecting property or rights, as well as the possible damages and lost profits arising from the performance of upstream operations

    ii. the rent regarding the occupation, easements, or the use of the land; and

    iii. in the case of petroleum extraction projects, a percentage of the revenue of the Interested Party in the project. In such case, SENER, assisted by the National Hydrocarbons Commission (Comisión Nacional de Hidrocarburos (CNH)), will establish the methodology, guidelines and parameters for the determination of the revenue percentage. The consideration may be paid in cash.

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

22. A foreign national must agree not to seek their government's protection or risk losing rights over property acquired for the benefit of the Mexican State.

23. According to Article 117 of the Hydrocarbons Law, this same procedure also applies to the acquisition, occupation or affectation of lands, assets or rights necessary for transportation through pipelines and surface acknowledgment and exploration activities.

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

The contract reached between the Interested Party and the Owner should be submitted before a civil district judge or before a Unitary Agrarian Court (**"Courts"**), to obtain its legal validation and be considered as res judicata.[24] The Courts will validate whether the contract complied with the requirements provided by the applicable regulations.

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

8. Property conveyance under Mexican law

Real estate transactions in Mexico are subject primarily to civil law as opposed to commercial law, to which they may be subject when the main corporate purpose of the parties involved in a given transaction is to commercialize real estate. Civil law is within the jurisdiction of the states; commercial law falls under federal jurisdiction, governed primarily by the Federal Code of Commerce. There is substantial uniformity among the different civil codes and related statutes of the states, especially with respect to the conveyance of real estate. In most respects, the models for the various states' civil codes are the Civil Code for the Federal District (now Mexico City) and the Federal Civil Code, which is also the applicable code when provisions of civil law are to be applied to federal matters. Judicial conflicts involving real estate are within the jurisdiction of the courts of the local judicial district[25] where the property is located, and the civil code of the state where the property is located applies. Because the laws of all states are generally patterned after the Civil Code of the Federal District (now Mexico City), discussions concerning the principal methods of property conveyances (sales and trust) will be based on said Code.

a. Funding of real estate transactions

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

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

The following are the most common collaterals in Mexico:

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

24. Res judicata is a legal principle that means once a court has issued a final resolution on a case, that resolution is conclusive and cannot be judged again in future cases involving the same parties and the same issues.

25. A judicial district is an area that includes several towns or cities judicially served by a specific local court or group of courts.

b. Types of conveyances

i. "Fee simple" conveyance

The most direct way to convey property in Mexico is through the equivalent to "fee simple" conveyance when permitted. The buyer and seller simply execute a public instrument, prepared by a notary public, which contains the sales contract and title transfer, where the parties must express their mutual consent to all material terms applicable to the transaction, that is, price, property boundaries, terms of payment, etc. Sometimes, a prospective seller and buyer will first sign a binding promise to purchase and sell agreement or a nonbinding letter of intent, which typically contain contingencies and/or conditions precedent that must be satisfied before the actual obligation and/or decision to execute the purchase and sale can be made. To be valid and enforceable, the promissory sales agreement must

i. be in writing;

ii. contain the essential elements of the final sales contract that is to be formalized before the civil law notary public, such as identification of the parties, description of the real property subject matter of the agreement, price and term; and

iii. be limited to certain period of time.

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

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

ii. Title retention and conveyances

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

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

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

iii. The trust regime

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

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

c. Formalities and procedural steps for the conveyance of title

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

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

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

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

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

d. Warranties given by a seller to a buyer

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

9. Ensuring good title

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

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

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

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

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

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

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

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

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

In the case of industrial or commercial properties, which are already developed, it is important to verify that there are no labor claims affecting the property. In general, under Mexican law, employees' rights have preference over other creditors.

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

10. Planning issues

Municipal authorities generally hold jurisdiction over the zoning or land use (commonly enacting urban development plans). However, federal and state authorities may also enact different general provisions (such as zoning laws), which set standards regarding permissible use for specific areas.

The federal, state and municipal authorities may also establish limits to land uses derived from the enactment of different kinds of environmental regulations. Examples include the enactment of environmental land use programs, which normally apply outside the urban area where an urban development plan is in place, or the creation of natural protected areas, which impose certain restrictions on activities permitted in a determined area and/or set limits on the density of developments allowed.

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

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

11. Environmental issues

According to the General Law for the Prevention and Integral Management of Waste, anyone in possession of real property is jointly and severally liable with the property owner and the contaminator, before the environmental authorities, to perform the necessary remediation. Additionally, as of 16 June 2013, the federal government has enacted the Federal Law of Environmental Liability (Ley Federal de Responsabilidad Ambiental), which establishes liabilities for environmental damages in addition to civil, criminal, and administrative liabilities.

This law regulates the liability arising from environmental damages and the remediation and compensation for such damages when enforceable through applicable judicial or administrative procedures.

Regarding remediation, the General Law for the Prevention and Integral Management of Waste stipulates that clean-up is required in cases of contaminated land where pollution exceeds applicable standards. The following standards classify and/or set specific limits on the discharge and use of certain pollutants:[26]

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

Additionally, it should be noted that transfer or sale of contaminated land requires prior authorization from SEMARNAT. Environmental authorities may request remediation from either the owner or the current occupier of the property, even if the contamination was caused by a third party or a former owner.

Furthermore, the Law for Sustainable Use of Energy provides a voluntary certification process for private parties to apply energy efficiency standards and sustainability measures in their operations before the National Commission for the Efficient Use of Energy. This includes implementing energy efficiency standards in the buildings they occupy. On a local level, various energy efficiency standards and incentives to promote sustainability practices may be available. Certain energy efficiency standards for residential and nonresidential buildings also apply to new constructions or expansions of existing ones; however, most of these provisions do not apply to buildings primarily used for industrial activities.

26. Other pollutants may require a risk study to determine if clean-up is necessary.

The main environmental permits required to operate in Mexico, either at the federal or local level, are the following:

- Environmental impact authorization
- Air emissions operating license
- Registration as generator of hazardous and nonhazardous waste
- Environmental risk authorization
- Water rights title or concession, when the municipal services are not available
- Wastewater permit

12. Taxes and fees on real estate transactions

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

a. Real estate acquisition tax

An irrevocable conveyance of title to real estate is subject to the real estate acquisition tax (REAT), which must be paid by the buyer. The REAT applies upon the formal conveyance of title to any real estate, with certain exceptions. Generally, the tax rate is between 2% and 3% of the highest value between the appraised Cadastre value or the transaction value of the real property.

b. VAT

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

c. Income tax

Income tax is a tax applied to the income earned by individuals and legal entities in Mexico. This tax covers earnings from various sources, including salaries, business activities, interest, rents, and the sale of real estate (if applicable). Income tax is applied to the profit obtained by the seller in the transaction. The seller pays this tax to the SAT after the transaction.

d. Recording fees

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

e. Appraisal fees

Pursuant to the law, appraisals must be performed in real estate transactions in order to determine the tax base for the transfer. In certain states, the appraisal is issued by the Municipal Treasury (Cadastre office), and in other states an appraisal must be performed by a commercial broker or a bank-certified appraiser. The normal cost of the appraisal and the bank's certification is 1% of the transaction value, although this compensation is often negotiable.

f. Brokerage, notarial and legal fees

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

13. Leasing

Mexican law recognizes the following types of leases:

- **Civil:** Civil leases may be determined by exclusion, such as when a lease is not commercial, administrative or financial. According to Mexican law, commercial transactions include acquisitions, transfers and leases executed with the intent of commercial speculation.
- **Commercial:** Commercial leasing of real estate is not expressly recognized by Mexican law, even if there is a profit motive. However, in the recent judicial thesis 1a./J. 170/2023 (11a.), issued on 10 November 2023, the Mexican Supreme Court of Justice ruled that in order to determine if a real estate lease agreement constitutes a commercial act, the judge must assess if the agreement was made for commercial speculation. Although the leasing of real estate is not expressly provided as a commercial act in Article 75 of the Commercial Code, it can have a commercial nature if it is carried out for speculative purposes.
- **Administrative:** A lease is administrative in nature if the leased premises belong to the Mexican federation, states or municipalities and is regulated by the applicable administrative law.
- **Financial:** Financial leases are governed by the General Law of Auxiliary Credit Organizations and Auxiliary Credit Activities.

Most of the provisions governing lease agreements are included by statute in Mexican civil codes; each state has its own applicable civil code. However, parties may freely discuss and determine other terms to regulate the lease and all its legal consequences, except for those provisions that by law are not subject to be waived. According to Article 13, Section III of the Federal Civil Code, the constitution, regime, and extinction of real property rights, as well as lease agreements and temporary use of such properties, will be governed by the laws of the place where the properties are located.

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

14. Landlord/tenant law

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

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

ii. **Net-net and triple-net leases:** Net-net and triple-net leases are the norm for industrial and commercial facilities.

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

iv. **Payment in foreign currency:** Leases may provide for payment in foreign currencies provided, however, that a Mexican tenant has the legal right to choose to pay such rent in pesos at the then-prevailing official exchange rate as published by the Bank of Mexico in the DOF, in terms of Article 8 of the Mexican Monetary Law.

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

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

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

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

15. Mortgagor/mortgagee law

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

a. Mortgages

Mortgages, still the most common means of security in Mexico for real estate financing transactions, must be granted in a contract executed before a notary public. Notarial fees vary but normally are in the 0.5% to 1% range. In most cases, foreclosure of a mortgage requires that a special summary judicial procedure be undertaken. If the cause of action were proven, a court order would be issued for the public auctioning of the mortgaged estate to satisfy the debt. The mortgagee may also be entitled, under certain conditions, to have the mortgaged property adjudicated to it instead of being publicly auctioned. If a foreign lender were to have the property adjudicated in its favor, it would have to do so with authorization from the SRE, which would be granted subject to the condition that the lender transfers the property in favor of a qualified third party within five years after the adjudication.

b. Guaranty trusts

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

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

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

c. Assignment of rents

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

d. Assignment of tourism proceeds

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

e. Assignment of performance bonds

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

16. FIBRA, FIBRA E, CKDs and CERPIs

Below you will find a brief description regarding FIBRAs, CKDs and CERPIs in Mexico.

a. Infrastructure and real estate trust

Infrastructure and real estate trusts (Fideicomisos de Infraestructura y Bienes Raíces (FIBRAs)) are the Mexican version of real estate investment trusts (REITs), which have been operating in the US for many years. Real estate developers create the FIBRA by contributing real estate in exchange for real estate stock certificates. Afterwards, the FIBRA makes a public offering of the real estate stock certificates based on certain eligibility criteria established in the FIBRA documentation. The resources obtained from the public offering are used to develop or to acquire the properties and real estate. Subsequently, the developer manages the real properties that are part of the FIBRA assets through an administration agreement executed by the FIBRA trustee and the developer.

Upon investing in a FIBRA, investors obtain

i. periodic payments in the form of leases and

ii. capital gains of the acquired or developed real estate that is part of the FIBRA assets, in addition to certain tax benefits as holders of real estate stock certificates.

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

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

b. Energy and infrastructure investment trust

Energy and infrastructure investment trusts are the Mexican version of master limited partnerships (MLPs) and YieldCo, which are focused on mature projects that are already earning stable cash flows. The trusts are issuers of publicly traded securities in the form of stock certificates (Certificados Bursátiles de Inversión en Energía e Infraestructura (CBFEs)) listed in the Mexican Stock Exchange and registered with the National Securities Registry. They have an external manager or **general partner** and allocate public funds obtained in Mexican private companies residing in Mexico (**"Promoted Companies"**) whose activities are related to

i. hydrocarbons and natural gas (with some rules and exceptions);

ii. generation, transmission and distribution of electric energy;

iii. infrastructure; and

iv. administration of an energy and infrastructure investment trust (FIBRA E).

In return for FIBRA E stock certificates, the sponsor contributes to the FIBRA E its equity interest in the Promoted Companies. A manager or general partner manages the FIBRA E and has the right to receive a management fee. The manager's variable fee or success fee is subordinated to the holders.

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

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

c. Capital development certificates

Certificates of capital development (Certificados de Capital de Desarrollo (CKDs)) are funds created through a Mexican trust structured to receive money from public investors through a public offering of trust certificates. The income is invested in certain projects whose characteristics are outlined in the issuance documents. CKDs were created mainly to offer an investment alternative for Mexican pension funds or retirement funds administrators (Afores).

CKDs mainly seek to

i. finance infrastructure and real estate projects; and/or

ii. make private equity investments, provided these investments are performed in Mexican companies. All investments made through CKDs are subject to the eligibility criteria stipulated in the CKD documents.

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

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

d. Investment project certificates

Investment project certificates (Certificados de Proyectos de Inversión (CERPIs)) are funds created through a Mexican trust structured to earn income from qualified institutional investors through a restricted public offering of trust certificates, which are created with the purpose of creating a vehicle similar to the international private equity funds. The issuance of the certificates may be completed in several public offers within a period of one year from the date of the first issuance.

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

As with CKDs, the yield value or return depends on the underlying assets of the trust that issues the CERPIs. The returns come from the profit of each project financed by its issuance.

Unlike CKDs, CERPIs may invest in international and national projects and companies without needing authorization from the holders' meeting or the technical committee. The purpose of the CERPI is to speed up investments by giving the manager broader authorities than those of the CKD manager. Therefore, to appoint representatives in the technical committee, it must hold at least 25% of the CERPIs instead of the 10% established for CKDs.

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

Compliance and anti-corruption

1. Introduction

As described throughout this guide, Mexico is a valuable partner for businesses in many countries Corruption has been a major obstacle for many years, but we hope to be able to provide help in this chapter for navigating these matters successfully.

First, we will provide some historical context to help the current legislation make more sense. Constitutional amendments in 2015 introduced regulations intended to combat corruption, strengthen public institutions, and promote government transparency and accountability. The reforms created the National Anti-Corruption System (NAS), which was embodied through seven secondary laws. These laws created a comprehensive system for coordinating authorities of all levels to prevent, detect and sanction corruption. Citizens' participation was key for enacting and implementing the system.

The constitutional amendment also established the Mexican states' obligation to incorporate local anti-corruption systems, similar to the NAS, to coordinate the relevant local authorities for the prevention, detection and punishment of administrative responsibilities and acts of corruption.

As a complement to the NAS, Congress also reformed the National Code of Criminal Procedures (NCCP) in 2016 to incorporate direct corporate criminal liability for certain crimes, including white-collar crimes. Under the NCCP's provisions, legal entities may be sanctioned for crimes committed in their name, on their behalf, for their benefit or using means provided by them, provided that the legal entity did not have "proper organizational controls" in place.

Despite the ambitiousness and importance of the NAS, full implementation is being obstructed and slowed by several factors, such as the absence of political will, failure to appoint enforcement agency heads, resistance from public officials and reduction in the budget allocated for the system.

2. The NAS

The General Law of the NAS establishes the NAS structure. This law defined the bases of coordination between the federation, states and municipalities for the correct operation of the NAS. The structure of the NAS is composed of a complex network of institutions, including the Coordinating Committee, the Citizen Participation Committee, the Governing Committee of the NAS and representatives of the local anti-corruption systems. The NAS introduced mechanisms for preventing, detecting, sanctioning and controlling acts of corruption in the public and private sectors.

3. Secondary legislation

a. General Law of Administrative Responsibilities

i. Introduction

The General Law of Administrative Responsibilities (GLAR) replaced the Federal Law of Administrative Responsibilities of Public Officials and the Federal Anti-Corruption Law in Public Procurement. It also changed the standard for sanctioning corruption in Mexico because it created liability for acts of corruption for private parties, which had not existed before, except in a criminal context.

The Ministry of Anti-Corruption and Good Government (SAGG)[27] is in charge of enforcing the GLAR. Through implementing "10 preventive pillars of corruption," the SAGG seeks to work closely with the public, private and social sectors to prevent and sanction corruption and build proactive transparency.

27. Previously known as the Ministry of Public Administration (Secretaría de la Función Pública).

ii. Offenses

The GLAR establishes obligations, responsibilities and sanctions for public officials and private parties that commit administrative offenses. The law applies to individuals and corporations when they act in Mexico.

The GLAR sanctions private parties (whether individuals or companies) for acts of corruption. These are called "acts of private parties linked to serious administrative offenses committed by public officials." Bribery, influence peddling, unlawful participation in administrative procedures, use of false information in administrative procedures, collusion and improper hiring of public officials are actions sanctioned by the GLAR.

This law defines corruption by private parties as follows:

> ... promising, offering or delivering any undue benefit to one or more public officials or abusing their influence to perform or refrain from performing any act, directly or through third parties, to obtain or maintain a benefit or advantage regardless of the result obtained.

In addition to the provision that sanctions private parties for bribery, the GLAR establishes that public officials commit bribery if they, by reason of their duties or responsibilities, directly or indirectly solicit, accept or obtain any money, goods, donations, services, employment, commissions or any benefit not included in their remuneration as public officials. The GLAR does not allow a minimum threshold amount.

iii. Sanctions

Sanctions that may be imposed on private parties include

i. fines of up to twice the amount obtained in benefits, up to USD 8.1 million,

ii. temporary debarment from participating in public procurement processes for up to 10 years

iii. suspension of activities for up to three years

iv. dissolution of legal entities and

v. compensation for damages.

The last two sanctions only apply when the company has obtained an economic benefit and the participation of management or owners is proven.

The standard of evidence to impose sanctions for these administrative offenses is the same as for criminal offenses, which is "beyond a reasonable doubt." In practice, however, it may be applied differently from criminal offenses because a different tribunal may apply administrative law.

vi. Corporate integrity program

The GLAR recognizes the importance of preventing corruption and establishes that, when imposing sanctions on companies, the enforcing authorities will consider whether the entities have an "integrity program" or compliance program. Integrity programs are a mitigating factor to reduce sanctions for companies.

An integrity program must include at least the following:

a. An organizational and procedures manual. This must include the company's general data, an organizational chart, a description of the functions and responsibilities of internal departments, and a map of all the organization's processes.

b. Code of conduct. This must be "socialized" (i.e., implemented by communication and/or training) within organizations and third parties related to the company and must be continuously reviewed for any potential updates. Among other things, it may include the company's mission and vision, a declaration of its ethical principles and values, and guidelines for the work environment.

c. Control, surveillance and audit systems. These systems must constantly evaluate companies' compliance and integrity standards. They may consist of a risk assessment matrix, risk control mechanisms, controls monitoring mechanisms and audit plans.

d. Reporting systems. These systems must implement the company's integrity standards and include channels for receiving and registering complaints, an investigation process, and mechanisms for communicating with competent authorities.

e. Training systems. These systems must consider business integrity principles and applicable anti-corruption provisions and evaluation mechanisms.

f. Human resources integrity hiring policies. These policies must describe the company's employee selection criteria, disincentivizing discriminatory practices, but must be strategies to avoid employing people who may be an integrity risk to the company.

g. Transparency and publicity mechanisms. Regarding these mechanisms, there are no minimum requirements to be included, but authorities consider that all means by which the company voluntarily communicates and disseminates its interests will be categorized as transparency and publicity mechanisms.

In November 2023, the SAGG updated its Corporate Integrity Program Model. This serves as a guide for companies to establish and implement integrity programs, considering principles, guidelines, standards and activities to improve integrity in companies' operations to prevent corruption risks.

b. Federal Criminal Code

i. Crimes

In addition to the GLAR, the Federal Criminal Code (FCC) sanctions corruption-related crimes, such as bribery of foreign and domestic public officials, influence peddling and illegal use of authority. The FCC provides that bribery can be committed by both public officials, who solicit or receive a bribe, and private individuals, who offer something or pay money to corrupt a public official, in exchange for an act or omission in the performance of the public official's function.

The provisions of the FCC apply to Mexican individuals and companies regardless of where the conduct occurs. Likewise, they will apply to individuals and companies for the crimes they commit and that have or are intended to have effects in Mexico, regardless of where they are committed.

ii. Sanctions

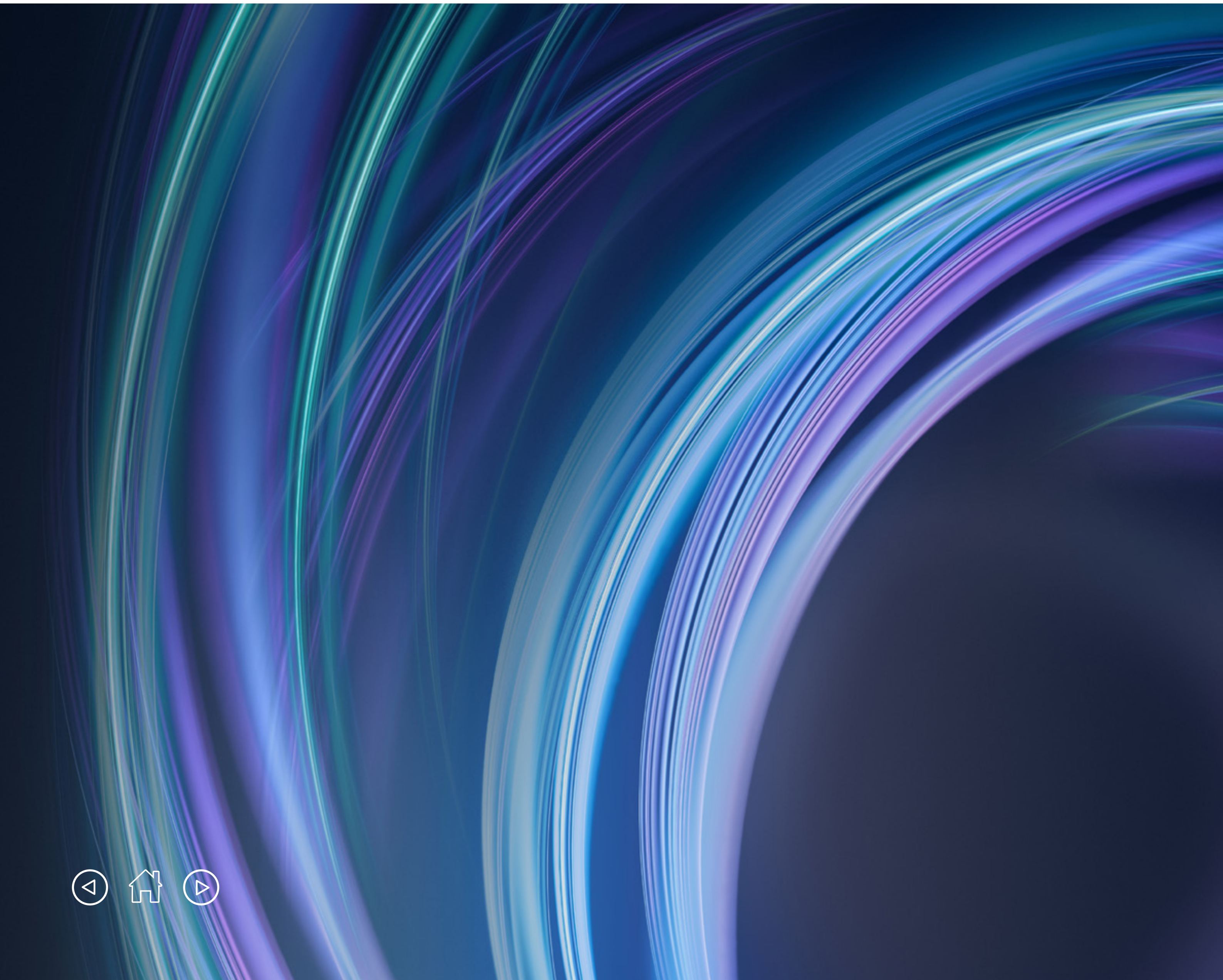
The FCC establishes the same penalties for both public officials and private parties. Penalties include up to 14 years' imprisonment, fines of up to a maximum of 150 day-fines,[28] removal from public office (if applicable), up to 20 years' prohibition from holding public office and debarment from participating in public procurement processes.

27. A "day-fine" is the average amount of income that an entity obtains in one day of operations.

4. Recent amendments

On 5 December 2024, Congress strengthened the GLAR by adding mechanisms for preventing, detecting and punishing acts of corruption in the public and private sectors. The GLAR now has jurisdiction over public officials belonging to the judicial branch, and anti-corruption enforcing authorities must promote and protect human rights, good public administration and austerity. Furthermore, the amendments intend to reinforce public officials' obligation to submit more detailed declarations of their assets and interests and to broaden enforcing authorities' powers to investigate and sanction conflicts of interest and illicit enrichment.

During the first months of 2025, President Claudia Sheinbaum is expected to send proposals to amend the Law on Acquisitions, Leases and Services of the Public Sector and the Law on Public Works in connection with the prevention of corrupt practices. According to the media, she will submit a bill to create a general law to investigate and punish crimes for acts of corruption. Through this, she aims to establish a uniform investigation and prosecution policy throughout the country by standardizing the principles and guidelines of the anti-corruption prosecutor's offices, and by giving them full autonomy to effectively investigate and punish cases of small- and large-scale corruption.



Acknowledgments

Consulting, data collection and analysis

Foreign Investment Law
Reynaldo Vizcarra
Jesús Antonio Pérez

Competition Law
Raymundo Enríquez
Luis Amado
Alina de la Luz

IMMEX or Maquiladora Program
Manuel Padrón
Juan Valles

Company Law
Jorge Ruiz
Fernando Gándara

Taxes
Jorge Narvaez
Diana Juárez
Eduardo Corona

International Trade
Adriana Ibarra
Yadira Torres

Labor Law
Salvador Pasquel

Environmental
Federico Ruanova

Intellectual Property
Carlos Vela
Daniel Villanueva
Marina Hurtado
Carlos Dávila

Real Estate
Juan Bernardo García
Alejandra Muriel
Carlos Maass

Compliance
Reynaldo Vizcarra
Jonathan Adams
Milka López

Contact Details - Red Latinoamericana

Argentina
Baker & McKenzie Sociedad Civil

Buenos Aires
Cecilia Grierson 255, 6th Floor
Buenos Aires C1107CPE
Argentina
Tel: +54 11 4310 2200
Fax: +54 11 4310 2299

Brazil
Trench, Rossi e Watanabe - Advogados

Brasilia
SAF/S Quadra 02, Lote 04, Sala 203
Ed. Comercial Via Esplanada
Brasilia - DF - 70070-600
Tel: +55 61 2102-5000
Fax: +55 61 3323-3312

Porto Alegre
Av. Soledade, 550
Cj. 403 e 404 | 90470-340
Porto Alegre - RS - Brasil
Tel: +55 51 3220-0900
Fax: +55 51 3220-0901

Rio de Janeiro
Rua Lauro Muller, 116 - Conj. 2802
Ed. Rio Sul Center | 22290-906
Rio de Janeiro - RJ - Brasil
Tel: +55 21 2206-4900
Fax: +55 21 2206-4949

Sao Paulo
Rua Arq. Olavo Redig de Campos,
105 – 31º andar, Ed. EZ Towers
Torre A, 04711-904
São Paulo, SP
Tel: +55 11 3048-6800
Fax: +55 11 5506-3455

Chile
Baker & McKenzie Ltda.

Santiago
Avenida Andrés Bello 2457, 19th floor
Providencia, CL 7510689
Santiago
Chile
Tel: +56 2 2367 7000
Fax: +56 2 2362 9876

Colombia
Baker & McKenzie S.A.S.

Bogotá
Carrera 11 No. 79-35 Floor 9
Bogotá, D.C. 110221
Colombia
Tel: +57 1 634 1500 / 644 9595
Fax: +57 1 376 2211

Mexico
Baker & McKenzie Abogados, S.C.

Guadalajara
Av. Paseo Royal Country 4596
Torre Cube 2, 16th floor
Fracc. Puerta de Hierro
Zapopan, Jalisco 45116
Mexico
Tel: +52 33 3848 5300
Fax: +52 33 3848 5399

Juárez
P.O. Box 9338 El Paso, TX 79995
P.T. de la República 3304, 1st floor
Juarez, Chihuahua 32330
Mexico
Tel: +52 656 629 1300
Fax: +52 656 629 1399

Mexico City
Pedregal 24
Edificio Virreyes, 12th floor
Lomas Virreyes / Col. Molino del Rey
México, D.F. 11040
Mexico
Tel: +52 55 5279 2900
Fax: +52 55 5279 2999

Monterrey
Av. Ricardo Margain Zozaya 335
Corporativo Equus – Tower II, 9th floor
Col. Valle del Campestre
San Pedro Garza García, N.L. 66265
Mexico
Tel: +52 81 8399 1300
Fax: +52 81 8399 1399

Tijuana
Blvd. Agua Caliente 10611, 1st floor
Tijuana, B.C. 22420
Mexico
Tel: +52 664 633 4300
Fax: +52 664 633 4399

Peru
Estudio Echecopar

Lima
Av. Los Conquistadores 1118, Piso 6
San Isidro, 15073, Lima, Perú
Tel: +51 1 618 8500
Fax: +51 1 372 7171/ 372 7374

Venezuela
Baker & McKenzie S.C.

Caracas
Centro Bancaribe, Intersección Avenida Principal
de Las Mercedes con inicio de Calle París,
Urbanización Las Mercedes
Caracas 1060
Venezuela
Tel: +58 212 276 5111
Fax: +58 212 993 0818; 993 9049

Baker McKenzie delivers integrated solutions to complex challenges.

Complex business challenges require an integrated response across different markets, sectors and areas of law. Baker McKenzie's client solutions provide seamless advice, underpinned by deep practice and sector expertise, as well as first-rate local market knowledge. Across more than 70 offices globally, Baker McKenzie works alongside our clients to deliver solutions for a connected world.

bakermckenzie.com