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2019
INVESTMENT POLICY AND REGULATORY REVIEW

Mexico

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GLOSSARY

BIT	Bilateral Investment Treaty
CDMX	Mexico City
COFECE	Federal Economic Competition Commission
CONACyT	National Council of Science and Technology
CONAMER	Regulatory Improvement Commission
CPC	Central Product Classification
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSR	Corporate Social Responsibility
DTAA	Double Taxation Avoidance Agreements
FDI	Foreign Direct Investment
FECL	Federal Economic Competition Law
FET	Fair and Equitable Treatment
FIE	Foreign-Invested Enterprise
FIL	Foreign Investment Law
FONDESO	Trust for the Social Development of the City
GATS	General Agreement on Trade in Services
GPGG	General Principle of Good Governance
HHI	Herfindahl–Hirschman Index
ICS	Investment Court System
ICSID	International Centre for Settlement of Investment Disputes
IIA	International Investment Agreement
IMF	International Monetary Fund
IPR	Intellectual Property Rights
IPRR	Investment Policy and Regulatory Review
ISDS	Investor-State Dispute Settlement
JDIH	National Documentation Network and Legal Information
L/C	Letter(s) of Credit
MFN	Most-Favored Nation
NAFTA	North American Free Trade Agreement
NMX	Mexican Voluntary Standards

NOM	Official Mexican Standards
NRFI	National Registry of Foreign Investment
NT	National Treatment
OFDI	Outward Foreign Direct Investment
PEMEX	Petróleos Mexicanos
SCM	Agreement on Subsidies and Countervailing Measures
SEDECO	Economic Development Ministry
SOE	State-Owned Enterprises
TIP	Treaty with Investment Provision
TRIMs	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UMA	Unit for Measure
UNCTAD	United Nations Conference on Trade and Development
USMCA	United-States-Mexico-Canada Agreement
VAT	Value-Added Tax
WTO	World Trade Organization

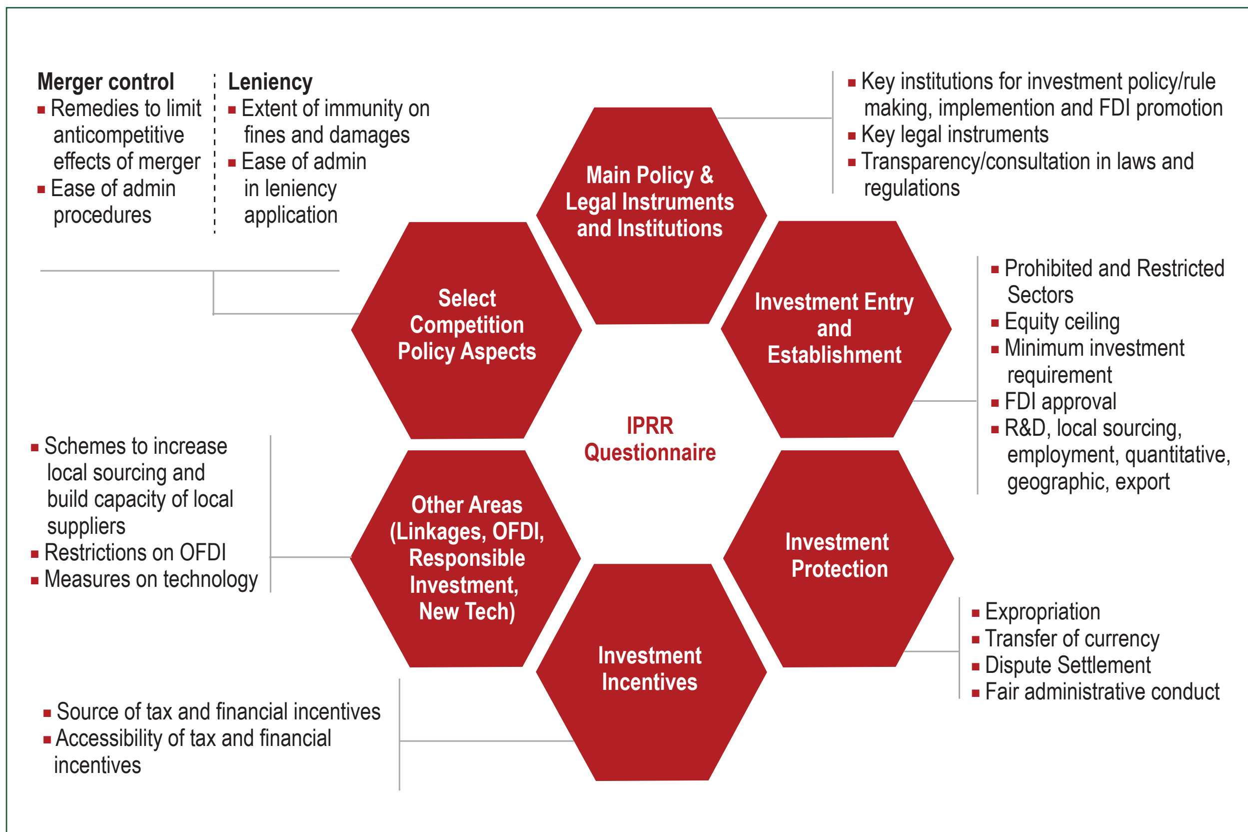
1. INTRODUCTION

This Investment Policy and Regulatory Review (IPRR) presents information on the legal and regulatory frameworks governing foreign direct investment (FDI) and competition that affect businesses and foreign investors in Mexico. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of **May 31, 2019**, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries (MICs): Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam.

The research for preparing this IPRR was undertaken by the international law firm Baker McKenzie, under the supervision of the World Bank Group. The research was primarily based on a review of currently applicable policies, laws and regulations. In some cases, consultations with regulators were conducted to collect up to date information.

The research was guided by a standardized questionnaire, covering a limited set of topics, including foreign investment entry, establishment, protection and select competition related aspects. The questionnaire focused on de jure frameworks as generally applicable to a foreign investor, not located in any specialized or preferential regime (such as special economic zones). It primarily focused on national, economy-wide (rather than sector-specific) laws and regulations. For the purpose of the research, it was assumed that the foreign investor is a private multinational company with no equity interest or

Figure 1. Overview of Topics Covered in IPRR



management control by the government of its home country (that is, not state-owned enterprise).

There are aspects that this IPRR does not cover. It is not a comprehensive review of the entire legal and regulatory framework affecting investment. Information presented is not exhaustive, but illustrative of the main topics and issues covered (for example, it does not exhaustively list all available tax and financial incentives in the country). It does not present recommendations on reform areas. Notably, it does not capture de facto implementation of laws and regulations in the country. Given these limitations, information presented in this IPRR should be interpreted and used keeping in view the overall country context and realities. Further, it contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed legal research.

This IPRR is organized as follows:

- Section 2 provides an overview of the country's investment policy framework, including the legal instruments regulating foreign investment, key institutions involved in investment promotion, as well as the country's foreign investment promotion strategy; it also delineates the country's international investment legal framework, including the country's commitments under the World Trade Organization (WTO) and select international investment agreements (IIAs);
- Sections 3-6 cover the country's policies and domestic legal framework concerning different dimensions of the lifecycle of an investment: entry and establishment (Section 3), protection (4), incentives (5) and linkages (6);
- Sections 7-9 explore emerging investment policy and regulatory areas — Section 7 considers outward FDI, Section 8 responsible investment, and Section 9 considers recent policies on new technologies;
- Section 10 focuses on city-specific investment policy and regulatory measures in the largest commercial center; and
- Section 11 covers select aspects of competition law and policy, specifically merger control and leniency frameworks.

2. OVERVIEW OF INVESTMENT POLICY FRAMEWORK

A. Domestic Legal Instruments Regulating Foreign Investment

Mexico has a foreign direct investment (FDI) law that governs foreign investment. In addition to this law, sector specific laws and bilateral and international agreements also regulate FDI in the country (alongside the general legal framework that applies to all businesses).

FDI Law and Regulation

The primary legislation governing FDI in Mexico is the Foreign Investment Law of 1993 as amended (*Ley de Inversión Extranjera*) (FIL) and its implementing regulation, the Regulation of the Foreign Investment Law and the Foreign Investment National Registry of 1998 as amended (*Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras*). The FIL expressly states that a foreign investor may participate in any portion in the capital of Mexican companies, acquire fixed assets, enter new fields of economic activity or manufacture new product lines, open and operate establishments, and expand or relocate existing establishments, except as otherwise provided in the FIL. Therefore, as a general rule the FIL permits foreign investors to hold up to 100% of the capital stock of any Mexican corporation or partnership, except in the few areas expressly subject to limitations under the FIL (discussed in sections below). Under the FIL, foreign investment is defined as (i) the participation in any percentage by foreign investors in the corporate capital of Mexican entities, (ii) investments by Mexican companies controlled, in its majority, by foreign investors, or (iii) the participation by foreign investors in the activities and sectors specified in the FIL. Regardless of the industry or sector, the FIL requires all foreign investment to be registered with the National Registry of Foreign Investment (NRFI) for statistical purposes. The FIL embodies three main principles: i) most-favored nation treatment; ii) fair price and due process for expropriation; and iii) equal treatment for foreign and national citizens.

The FIL superseded the prior Law to Promote Mexican Investment and Regulate Foreign Investment of 1973 (*Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera*) (1973 Law) as the main law governing investment, shifting emphasis to the promotion of foreign investment. The 1973 Law had been focused on investments by the Mexican government and Mexican nationals rather than the promotion of foreign investment in Mexico. Thus, under that law, foreign investors faced several hurdles with respect to investing in Mexico, such as a statutory limit of 49% of participation in any Mexican company, and even lower thresholds in some industries, such as the exploration of mines and quarries, secondary products from the petrochemical industry, and fabrication of automobile components. In 1993, the Mexican Congress approved and enacted the FIL to facilitate foreign investment in most sectors and target economic growth through the promotion of foreign investment in the country.

Sector Specific Laws

Foreign investors are also subject to sector-specific laws and regulations depending on the sector in which the investment is contemplated.

Public Access to Foreign Investment Laws and Policies

The Mexican Federal Constitution obligates the Congress and the President of Mexico to publish all laws and regulations, and amendments thereto, in the Official Federal Gazette *(Diario Oficial de la Federación).* The official website of the Federal Gazette contains up-to-date information of the new laws and regulations, as well as reforms to such laws and regulations. Every state has its own Official Gazette in which new state laws and reforms to state laws are published.

Consultation with Stakeholders

Regulatory impact assessments, public consultations and stakeholder engagement on draft regulations are mandatory for all regulatory proposals and primary laws coming from the executive. The 2018 General Law of Regulatory Improvement (*Ley General de Mejora Regulatoria*) creates the Regulatory Improvement Commission (CONAMER) in charge of issuing guidelines and tools that give access to bills, prior to their publication, to stakeholders who can then issue non-binding comments on the draft bills.

B. International Legal Instruments Regulating Foreign Investment

Mexico has undertaken legally binding international investment commitments through a variety of international investment agreements (IIAs) — signed at the bilateral, plurilateral and multilateral level. These commitments mainly cover entry and establishment conditions, protection, as well as the legality of specific types of incentives (see Table 1., below). It is important that Mexico reflect these commitments in its domestic legal framework to ensure consistency as well as to monitor compliance.

Having been a member of the World Trade Organization (WTO) since January 1, 1995, Mexico has commitments under several WTO Agreements. Under the General Agreement on Trade in Services (GATS), Mexico grants rights

Table 1. Mexico's International Investment Framework

Agreement(s) as Basis of Commitments	Type of Agreement	Investment Policy Dimensions Covered
WTO GATS Agreements	Multilateral	Entry and Establishment
WTO TRIMs Agreement	Multilateral	Entry and Establishment, Incentives
WTO SCM Agreement	Multilateral	Incentives
WTO TRIPS Agreement	Multilateral	Protection
Treaties with Investment Provisions (TIPs) (17 signed, 15 in force)	Plurilateral or Bilateral	May cover Entry and Establishment, Protection, Incentives
Bilateral Investment Treaties (BITs) (32 signed, 30 in force)	Bilateral	May cover Entry and Establishment, Protection, Incentives
International Centre for Settlement of Investment Disputes (ICSID) Convention	Multilateral	Protection
Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)	Multilateral	Protection
IMF Articles of Agreement (Art. VIII Acceptance)	Multilateral	Protection
Double Taxation Avoidance Agreements (60 treaties in force)	Bilateral	Taxation

Source: World Bank Analysis

to services suppliers from other WTO member countries. This includes services supplied through commercial presence (defined as establishment of a territorial presence), in other words through FDI. These rights are granted through commitments undertaken in "schedules". The "schedules" list sectors being opened, the extent of market access being given in those sectors (for example, whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies). Mexico has made commitments to market access and national treatment in 10 out of 12 services sectors that feature in the WTO Classification[1]: (i) Business services, (ii) Communication services, (iii) Construction and related engineering services, (iv) Distribution services, (v) Educational services, (vi) Financial services, (vii) Health related and social services, (viii) Tourism and travel related services, (ix) Transport services, and (x) Other services not included elsewhere. In these 10 sectors Mexico has made partial commitments for specific services in 31 sub-sectors. "Partial" means that although commitments have been made, there are still limitations/reservations, which may differ in their restrictiveness. For example, they may be more restrictive by limiting the equity contribution of the foreign investor, or less restrictive by merely requiring foreign service suppliers to become a member of a union chamber. Across all sectors, Mexico has reserved the right to deviate from national treatment commitments to grant research and development subsidies and incentives to small enterprises owned by Mexican nationals. In addition, under GATS every member is obligated to unconditionally extend to service suppliers of all other WTO members Most-Favored Nation (MFN) Treatment. However, Mexico has made reservations in that regard—it reserves differential treatment of service providers from the United States of America in specific tourism and travel related services as well as in road transport services.

Under the WTO Agreement on Trade Related Investment Measures (TRIMs), Mexico has committed not to apply certain investment measures that restrict or distort trade (local content requirements, trade balancing requirements, foreign exchange restrictions and export restrictions). These measures are prohibited both when the obligation for the foreign investors is mandatory and when it is tied to obtaining an advantage (that is, an incentive). Incentives are further regulated by the WTO Agreement on Subsidies and Countervailing Measures (SCM), which among others prohibits certain types of export subsidies. Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), foreign investors' intellectual property rights are protected. In case of a violation of any of its WTO commitments, Mexico may be sued under the WTO dispute settlement mechanism.

Mexico has further entered into obligations through international investment agreements (IIAs) — 30 Bilateral Investment Treaties and 15 Treaties with Investment Provisions (TIPs) are currently in force. The latter category is composed of treaties that include obligations commonly found in bilateral investment treaties BITs (for example, a preferential trade agreement with an investment chapter). Table 2. below provides an overview of select Agreements: its IIA with the largest home country measured by that country's share in Mexico's total FDI stock (North American Free Trade Agreement, NAFTA, 1994), an IIA with expansive regional coverage (Comprehensive and Progressive Agreement for Trans-Pacific Partnership, CPTPP, 2018) as well as its second-latest IIA (Mexico-United Arab Emirates BIT, 2018). The table shows that generally the main protection guarantees are provided in the reviewed agreements. CPTPP and NAFTA do not provide national treatment or most-favored nation treatment for government procurement, subsidies or grants.

Some of Mexico's reviewed IIAs contain commitments to liberalize. Both NAFTA and CPTPP include such commitments, granting national treatment and MFN in the pre-establishment phase. In both cases, the treaty partners make reservations: Annex I lists measures that do not comply with the commitments, and Annex II lists sectors and activities in which countries may maintain existing, or adopt new or more restrictive, measures. The two agreements also contain a "ratchet mechanism", which ensures that any future regulatory or legal

Table 2. Comparison of Mexico's Select IIAs

	Largest Home Country IIA (% of total FDI stock): North American Free Trade Agreement (NAFTA) (1994) (USA)	Latest IIA (date of entry into force): Mexico-United Arab Emirates BIT (2018) (CPTPP entered into force later, features as IIA with expansive regional coverage)	Expansive Regional Coverage IIA (highest number of members): Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP, 2018)
Scope of Application			
Covers pre-establishment	Yes	No	Yes
Exclusions from scope	Government procurement, Subsidies or grants (both for NT, MFN)	No	Government procurement, Subsidies or grants (both for NT, MFN)
Standards of Treatment			
National Treatment (NT)	Pre- and post-establishment	Post-establishment	Pre- and post-establishment
Most-Favored-Nation Treatment (MFN)	Pre- and post-establishment	Post-establishment	Pre- and post-establishment
Fair and Equitable Treatment (FET)	Yes	Yes	Yes
Full Protection & Security	Yes	Yes	Yes
Expropriation	Direct and indirect expropriation, payment of compensation	Direct and indirect expropriation, payment of compensation	Direct and indirect expropriation, payment of compensation
Rights to Transfer Funds	Yes	Yes	Yes
Prohibition of Performance Requirements	TRIMs+ (Prohibiting a larger number of performance requirements than in TRIMs)	No	TRIMs+
Dispute Resolution			
State-State Dispute Settlement	Yes	Yes	Yes
Investor-State Dispute Settlement	Yes	Yes	Yes

Source: World Bank Analysis based on IIAs obtained from United Nations Conference on Trade and Development (UNCTAD) Investment Policy Hub

change that makes it easier for investors from one party to access the other party's market will automatically be locked-in under the Agreement and therefore cannot subsequently be made more restrictive. In addition, the two agreements further include a prohibition on performance requirements. The provision goes beyond TRIMs in scope and includes a higher number of performance requirements that are prohibited (a so-called TRIMs+ standard).

In June 2019, Mexico became the first country to ratify the United-States-Mexico-Canada Agreement (USMCA), which was signed by the three parties in November 2018 to replace NAFTA. On December 10, 2019, the United States, Canada, and Mexico agreed to a protocol of amendment to the USMCA. While there are no changes to the investment chapter, significant amendments concern labor and environmental provisions as well as intellectual property rights

(IPR). As of January 2020, the amended USMCA has been ratified by Mexico and the US.

Compared to NAFTA, USMCA's investment chapter curtails investor-state dispute settlement (ISDS). Recourse to ISDS will not be available between Canada and Mexico (although access to ISDS is available under CPTPP). Between Mexico and the United States the USMCA includes a 30-months local remedies requirement and strictly circumscribes the substantive provisions subject to ISDS. Access to ISDS is limited to a breach of national treatment, most-favored-nation treatment, or for direct expropriation. Claims alleging a violation of national treatment with respect to the establishment or acquisition of an investment, a violation of fair and equitable treatment, and indirect (or regulatory) expropriation, all of which made up the majority of ISDS claims made under NAFTA, will no longer be covered.

In April 2018, Mexico reached an "agreement in principle" with the European Union on a new trade agreement, including rules on investment. This agreement includes a substantive procedural reform: instead of conventional investor-state dispute settlement through investment arbitration, a so-called investment court system (ICS) is introduced. The investment court system consists of a first instance tribunal and an appeal tribunal. Party-appointed arbitrators (selected by the disputing parties) are replaced by tribunal members appointed by State Parties, assigned to specific cases on a rotational basis.

Mexico is a member of treaties covering investment arbitration. It is a member of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the International Centre for Settlement of Investment Disputes Convention that facilitate the enforcement of arbitral awards. It has been a respondent in thirty publicly known investor-State arbitrations. Nine of these disputes have been decided in favor of the investor, eight in favor of Mexico, three have been discontinued, one settled, and nine are currently pending.

Acceptance of Art. VIII of the International Monetary Fund (IMF) Articles Agreement requires Mexico to maintain current account convertibility, enabling investors to transfer certain payments related to their investments. Mexico is also party to 60 Double Taxation Avoidance Agreements (DTAA) that are in force, influencing its ability to tax foreign investors and investments.

C. Key Institutions for Investment Promotion

Prior to President Andrés Manuel López Obrador coming into office, ProMéxico was the main foreign investment promotion agency to facilitate foreign investment into the country as well as outbound investments, including Mexican exports. Formed in 2007 under the government of Felipe Calderón, ProMéxico had offices in 31 countries. In April 2019, President Obrador officially disbanded ProMéxico and announced the opening of a new facilitation agency to replace ProMéxico's functions.

National Level Institutions

The National Foreign Investment Commission (Commission) established under the FIL is a government body reporting to the Ministry of Economy. The Commission is comprised of the Ministers of Government; Foreign Affairs; following Treasury and Public Finance: Social Development; Environment and Natural Resources; Energy; Economy; Communications and Transportation; Labor and Social Welfare; and Tourism, who may appoint a Sub-Secretary as an alternate. The Commission may invite private and social representatives, subject matter experts and stakeholders to participate (but not vote) in its sessions. The Minister of Economy chairs the Commission and has an Executive Secretary and a Committee of Representatives for its operation. The Committee of Representatives is comprised of the civil servants appointed by each of the Ministers who sit on the Commission, is mandated to meet at least once every four months and has the authority delegated to it by the Commission. The Commission is mandated to meet at least twice a year and decide upon the issues within its scope by a majority vote. In case of a draw, the Chairman of the Commission has a casting vote.

The FIL empowers the Commission with the following authority:

- To issue political guidelines on foreign investment matters and to design mechanisms to promote foreign investment in Mexico;
- To resolve, through the Ministry, issues on the viability and, as the case may be, on the terms and conditions for the participation of foreign investment in activities or acquisitions with specific regulation, pursuant to Articles 8 and 9 of the FIL (where FDI exceeds 49% or other specified thresholds);
- To be the mandatory consulting entity on foreign investment matters for governmental agencies and entities of the Federal Public Administration; and,
- To establish the criteria for the application of legal and regulatory provisions on foreign investment, through the issuance of general resolutions.

In addition to establishing guidelines and policies regarding foreign investment, the Commission is also in charge of granting all authorizations for FDI in Mexico, as further described in Section 3, below.

The FIL also establishes the National Foreign Investment Registry (Registro Nacional de Inversion Extranjera) (Registry) and stipulates the various subjects for registration with the Registry, including foreign investment in Mexico. The Registry is maintained by the Ministry of Economy. All foreign investors and Mexican companies with foreign participation are subject to the registration and periodic reporting requirements. The main purpose of the Registry is to account, track and pool the information it receives and prepare reliable, timely statistics under international standards on FDI flows in Mexico. Specific information about investors and investments registered with the Registry is not publicly accessible except for statistical data available through the Registry's website portal.

Sub-National Investment Promotion Agencies

Mexico has a number of sub-national agencies (that is, state government agencies) engaged in investment policy making as well as some promotion activities, which are part of each state's government, including, amongst others:

- The Sustainable Economic Development Ministry of the State of Guanajuato;
- The Economic Development Ministry of Jalisco;
- The Ministry of Competition, Labor and Economic Development of the State of Puebla; and,
- The Ministry of Economic Development of Nuevo León.

These sub-national agencies have the objective of attracting business investments in the relevant state.

D. Foreign Investment Promotion Strategy

The 2019-2024 National Development Plan (*Plan Nacional de Desarrollo*) published on July 12, 2019 in the Federal Official Gazette sets forth the national objectives, strategy, and priorities for Mexico's development. The Plan defines the country's strategy on different economic matters. The National Plan is issued by each new President at the beginning of his/her term pursuant to Article 26 of the Federal Constitution. The President may amend the National Plan from time to time during the presidential term. The main economic objectives under the 2019-2024 National Plan are to stimulate growth, maintain the stability of public finances, and boost national and foreign private investment.

3. INVESTMENT ENTRY AND ESTABLISHMENT

Market Entry and Sectoral Limitations

The FIL expressly prohibits foreign investment in certain sectors or business activities specifically reserved for Mexican Government and for the participation of Mexican citizens or for Mexican companies with a "foreigner exclusion" clause in their bylaws, pursuant to Articles 5 and 6 of the FIL (Prohibited Sectors). The "foreigner exclusion" clause defined in Article 2 of the FIL is an express agreement or covenant forming an integral part of the corporate bylaws prohibiting the corporation to admit directly or indirectly any foreign investors as partners or stockholders.

The FIL further restricts foreign equity participation in certain sectors and business activities set forth in Article 7 (Restricted Sectors). It also enumerates a handful of business activities set forth in Article 8 in which up to 100% FDI is permitted, but any FDI beyond 49% requires the Commission's prior authorization.

For sectors and business activities not included in the FIL, the general position is that foreign investors are accorded equal treatment as afforded to domestic investors and FDI is permitted without restrictions, subject to applicable sector-specific and other laws and regulations.

Prohibited and Restricted Sectors

Table 3. lists the Prohibited and Restricted Sectors based on the FIL.

In Restricted Sectors where less than 100% FDI is permitted, foreign investors are (by implication) required to form joint ventures with a local partner. A foreign investor may not bypass the foreign equity restrictions through mergers and acquisitions.

Restrictions on Non-Equity Contract Based Investments

Generally, no special restrictions or conditions are imposed on foreign investors with respect to domestic investors as regards non-equity contract-based investments such as franchising, outsourcing, licensing, and so on.

Forms of Establishment

There is generally no special requirement or restriction on the type of local entity a foreign investor may invest in or establish provided the necessary regulatory approvals are obtained. Foreign investors can hold any type of shares in a Mexican company other than a company owning land used for agriculture, livestock or forestry

Table 3. List of Major Prohibited and Restricted Sectors

Prohibited Sectors	Scope
Reserved for Mexican Government	
Petroleum and Gas	Exploration and extraction of oil and other hydrocarbons
Electricity generation and transmission	Planning and control of the national electric system, as well as the public services of transmission and distribution of electricity
Nuclear energy	Generation of nuclear energy
Mining and Quarrying	Radioactive minerals
Bank note issuing	Bank note issuing
Minting of Coins	Minting of coins
Ports	Control, supervision and surveillance of ports, airports and heliports
Telegraph	▪ Telegraph ▪ Radiotelegraphy

Reserved for Mexican Nationals and Mexican Companies	
Logistics, Transport and Tourism	Domestic land transportation for passengers, tourism and freight, not including messenger or courier services
Banking	Development banking institutions
Services	Rendering of professional and technical services
Restricted Sectors	**Scope and Foreign Equity Caps**
Cooperatives	Up to 10% in cooperative companies for production
Explosives and Firearms	Up to 49% in manufacture and commercialization of explosives, firearms, cartridges, ammunitions and fireworks, not including acquisition and use of explosives for industrial and extraction activities nor the preparation of explosive compounds for use in said activities
Printing and Publication	Up to 49% in printing and publication of newspapers for circulation solely throughout Mexico
Land Use	Up to 49% in series "T" shares in companies owning land used for agriculture, livestock or forestry purposes
Fishery	Up to 49% in fresh water, coastal, and exclusive economic zone fishing not including fisheries
Ports	Up to 49% in integral port administration
Port Services	Up to 49% in port pilot services for inland navigation under the terms
Shipping	Up to 49% in shipping companies engaged in commercial exploitation of ships for inland and coastal navigation, excluding tourism cruises and exploitation of marine dredges and devices for port construction, conservation and operation
Fuel	Up to 49% in supply of fuel and lubricants for ships, airplanes, and railway equipment
Broadcasting	Up to 49%, subject to reciprocity with foreign investor country
Air transport	Up to 49% in scheduled and non-scheduled domestic air transport service; nonscheduled international air transport service in air taxi modality; and specialized air transport service.
Sectors requiring Commission's approval	**Scope — Foreign equity permitted up to 100% but above 49% requires Commission approval**
Port Services	Port services to allow ships to conduct inland navigation operations, such as towing, mooring and barging
Shipping	Shipping companies engaged in exploitation of ships solely for high-seas traffic
Public Air Transport	Concessionaire or permissionaire companies of air fields for public service
Education	Private education services of pre-school, elementary, middle school, high school, college or any combination
Services	Legal services
Railways	Construction, operation and exploitation of general railways and public services of railway transportation

Source: Analysis by Baker McKenzie based on country's laws and regulations
Note: The table provides information on the 32 specific sectors identified for the purpose of this research. The list of sectors is therefore not exhaustive.[2]

purposes, in which cases up to 49% foreign equity is permitted. In such a type of company, foreign investors can only hold series "T" shares. The "T" stands for "Tierra" (Land) which indicates that the company was set up to hold farming/ranching land and the foreigners may acquire ownership of this series of stock (which Series does not exceed 49% of the total corporate ownership/capital). Series "T" shares are equivalent in value to the capital contributed in agriculture, livestock or forestry land, or those funds destined for the acquisition of such land, depending on the value of the land at the moment of the contribution or acquisition.

Minimum Investment Requirements

Under Mexican law, there is no minimum investment requirement for FDI.

Quantitative Limits

There are generally no mandatory quantitative limits on the number of foreign service providers, enterprises or market players that can operate in a given sector.

Restrictions on Expatriate Appointments

While there are no overarching limitations on the appointment of foreigners to the boards of local companies, there are limitations on appointments to key managerial and technical positions under sector specific laws. For example, in the aviation sector, commercial pilots and flight crew of commercial planes registered in Mexico must be Mexican by birth.

Further, the Federal Labor Law (*Ley Federal del Trabajo*) in Article 7 states that all companies in Mexico must employ at least 90% Mexican workers. In addition, for technical and professional positions, the workers should be Mexican. If no Mexican candidates are available due to the specialty of such positions, the employer company may temporarily hire foreign workers (but no more than 10% of workers with that specialty) and the hiring company has the obligation of training Mexican workers for such positions. In Article 154, employers are required to select Mexicans over non-Mexicans for positions and promotions when they are similarly qualified.

Medical doctors working for companies must be Mexicans. These provisions do not apply to people hired in the positions of directors, administrators and general managers and they do not count towards the prescribed percentage.

For a foreign national to work in Mexico, a work permit and a visa must be obtained through the National Migration Institute. The General Guidelines for the Issuance of Visas (*Lineamientos Generales para la Expedición de Visas*) describe the rules to obtain work permits for foreign citizens to work in Mexico.

Local Sourcing and R&D Requirements

There is no overarching national level legal requirement that subjects foreign investors to local sourcing requirements or local R&D investments in order to establish business in Mexico.

Foreign Investment Approval

FDI approval is required from the National Foreign Investment Commission in the following cases: (i) if the contemplated foreign investment exceeds 49% in a regulated sector pursuant to Article 8 of the FIL (See Table 3), or if (ii) the foreign investment exceeds 49% of the capital stock of a Mexican entity with an aggregate value of assets higher than the amount annually determined by the Commission (which is currently set at $211 million) (per Article 9).

The process to obtain FDI approval is listed in the FIL and in its regulations. The "Manual of Procedures to Invest in Mexico" published by the Directorate of International Affairs and Public Policy provides clear guidelines on the process. FDI applications must be submitted to the Commission for approval with the necessary documentation and fees.

In evaluating the proposals, the Commission considers the following criteria (per Article 29):

- Impact on employment and training of workers
- Technological contribution
- Compliance with environmental provisions included in the ecological regulations governing the matter
- Its contribution to increase the competitiveness of the country's productive system.

Further, in determining whether to grant approval, the Commission is empowered to prevent acquisitions by foreign investors for reasons of national security. Notably under Article 29, the Commission can impose only those conditions or requirements that do not distort international trade. The Commission has 45 business days from the FDI approval submission date to respond to the request. If the Commission fails to respond within the noted period, the FDI request is deemed approved as submitted.

Under the FIL, all foreign investments, whether subject to prior approval or not, must be registered with the Registry within 40 business days from the date of the respective incorporation, branch registration, acquisition or execution of the relevant trust agreement. Upon such registration, the Ministry of Economy will issue a registration certificate, which must be renewed annually. Foreign investors that do not register their investment with the Registry are subject to administrative fines.

4. INVESTMENT PROTECTION

Protection Against Expropriation

Expropriation is regulated by the Mexican Federal Constitution and the Expropriation Law (*Ley de Expropiación*). The FIL does not contain any express protections for foreign investors against expropriation. The Constitution stipulates that "private property shall not be expropriated except for reasons of public use and subject to payment of indemnity." The Expropriation Law (*Ley de Expropiación*) applies to both domestic and foreign investors and outlines the criteria for evaluating a lawful expropriation. The causes that are deemed valid as public interest reasons for expropriation are listed in Box 1, below. Indemnification is required to be paid in Mexican currency and at fair market price. The Mexican government can expropriate any assets under Mexican law.

Further, foreign investors from certain countries enjoy protection against (direct and/or indirect) expropriation under international investment treaties. A number of these agreements include investor rights against direct and indirect expropriation, requiring that for an expropriation to be lawful, it must be for a public purpose,

Box 1. Public Interest Criteria for Expropriation under Mexico's Expropriation Law

- The establishment, exploitation or conservation of a public service;
- The opening, expansion or alignment of streets, the construction of roads, bridges, roads and tunnels to facilitate urban and suburban transit;
- The beautification, expansion and rehabilitation of the towns and ports, the construction of hospitals, schools, parks, gardens, sports or landing fields, office buildings for the Federal Government and of any work destined to provide services of collective benefit;
- The construction of public infrastructure works and the provision of public services, which require real estate and its improvements, derived from concession, contract or any act legally concluded in terms of the applicable legal provisions;
- The conservation of places of panoramic beauty, of antiquities and objects of art, of archaeological or historical buildings and monuments, and the things that are considered as remarkable characteristics of [Mexican] national culture;
- The satisfaction of collective needs in case of war or internal disorders; the supply of cities or centers of population, food or other consumer goods necessary, and the procedures used to combat or prevent the spread of epidemics, epizootics, fires, plagues, floods or other public calamities;
- The means used for national defense or for the maintenance of public peace;
- The defense, conservation, development or use of susceptible natural elements of exploitation;
- The equitable distribution of monopolized or monopolized wealth with the exclusive advantage of a or several people and to the detriment of the community in general, or of a particular class;
- The creation, promotion or conservation of a company for the benefit of the community;
- The necessary measures to avoid the destruction of the natural elements and the damages that the property may suffer to the detriment of the community;
- The creation or improvement of population centers and their own sources of life.

following due process, non-discriminatory and for the payment to be adequate, effective, and prompt compensation (see Section 2 — International Legal Framework).

Restrictions on Inflow and Outflow of Funds

There are no specific limitations on foreign investors in terms of inflow and outflow of funds (net of applicable taxes and subject to other standard compliances). As such, a foreign investor may freely transfer inward and outward their capital contributions, profits, capital gains, intracompany loans, income from asset disposal, intellectual property rights (IPR) royalties, lawfully obtained compensation or indemnity, income from liquidation and other similar proceeds in the Mexican peso or a foreign currency.

There are no exchange control restrictions (the Mexican peso is freely convertible), but the central bank, *Banco de Mexico*, can suspend a transfer in the event of an "unusual transaction". Pursuant to the General Rules of Article 115 of the Credit Institutions Law, commercial banks have the obligation of reporting unusual operations made by their customers to the Ministry of Treasury and Public Finance. Under the Rules, the commercial bank and the Ministry may consider an operation unusual if it does not match the activities previously made by such customer. To evaluate the transaction, the following information is considered:

- Origin or destination of resources;
- Amount;
- Frequency;
- Type; or
- Nature.

If the commercial bank (to ensure compliance with Credit Institutions Law) considers, pursuant to the criteria established in the Rules, that any given operation is unusual, the bank may suspend the operation until the Ministry gives its clearance or the customer gives due reasoning for such a movement or transfer.

Dispute Settlement

Foreign investors have access to a broad range of dispute settlement mechanisms. Any individual or entity may use any of the mechanisms provided under Articles 14, 16 and 17 of the Federal Constitution, including any of form of trial, arbitration or mediation (or any other alternate dispute resolution mechanisms), which are regulated by the specific procedural laws, either federal or local. Likewise, any foreign citizen or entity could also apply any applicable international treaty in connection with dispute resolution mechanisms.

Due process must be followed by the Mexican authorities, pursuant to the Federal Constitution's Articles 14 and 16. A foreign investor is entitled to appeal or seek an administrative revision with the federal administrative courts in the event of an administrative conflict.

5. INVESTMENT INCENTIVES

Mexico's investment incentives regime applies equally to both domestic and foreign investors. No special tax or financial incentives or concessions are granted to foreign investors only.

Investments in certain industries such as film and theatre projects, agriculture, livestock, fishing and timber are eligible for special tax incentives. Mexican Income Tax Law sets forth the federal tax incentives that taxpayers may use pursuant to their main economic activities. No non-tax incentives are granted at the federal level. Most regional incentives have been gradually repealed. State and local governments may grant certain incentives within their jurisdictions.

FDI may be eligible for the following types of federal tax incentives depending on the nature and scope of the investments:

- **Full or partial reduction in corporate income tax (that is Tax holiday or lower tax rate):** All allowed deductions for income tax are provided for in the Tax Administrative Guidelines published each year by the Ministry of Treasury and Public Finance (*Secretaria de Hacienda y Credito Publico*) (Ministry of Treasury) and in the Income Tax Law (*Ley del Impuesto Sobre la Renta*). A reduction is allowed on the tax basis, but not on the rate. Likewise, administrative decrees include programs like IMMEX (export services) contained in the "Decree for the Promotion of the Manufacturing, Maquiladora and Exporting Services Industry";
- **Performance based incentives (for example, allowances and accelerated depreciations):** The Ministry of Treasury issues the rules for accelerated depreciations and industry-focused incentives based on policy objectives through the Federal Revenue Law and the Tax Administrative Guidelines the Ministry publishes each year. Similarly, the Ministry of Economy has different decrees regulating certification on quality standards based on the Official Mexican Standards (NOMs) and Mexican Voluntary Standards (NMXs) and grants incentives based on them;
- **Value added tax (VAT) exemption and/or remission:** The Ministry of Treasury publishes the allowed exemptions, application of 0% VAT rate, or remissions on the VAT through the Value Added Tax Law and the Tax Administrative Guidelines published each year;
- **Customs duty exemption and/or remission:** Exceptions to custom duties are included in the General Import and Export Taxes Law (*Ley de los Impuestos Generales de Importación y Exportación*) and the Customs Law (*Ley Aduanera*). Additionally, Mexico has subscribed to trade and investment agreements with over 50 countries, in many cases there are specific exceptions contained in such agreements.

The incentives are generally linked to defined policy objectives published each year through the Miscellaneous Fiscal Rules. These Rules are part of the annually published Income Law (*Ley de Ingresos*) and contain the Ministry of Treasury's policies and objectives for collections and tax law implementation for each fiscal year, with its models and projections for collections. In addition, the Ministry of Treasury annually publishes specific economic criteria, including economic forecasts for the said year, and how these forecasts affect the growth and expenditure of the federal government (*Criterios Generales de Política Económica para la Iniciativa de Ley de Ingresos y el Proyecto de Presupuesto de Egresos de la Federación* Correspondientes Al Ejercicio Fiscal 2019).

All tax incentives and stimuli are provided on the Tax Administration Service (*Servicio de Administración Tributaria*) website. The portal is updated periodically with modifications to such incentives and is maintained by the Tax Administration Service of the Ministry of Treasury.

Eligibility Criteria and Approval Process

The tax incentives offered at the federal level are based on objective eligibility criteria set forth in the specific sector regulation and in the Federal Tax Code and Income and Value Added Tax laws. The Fiscal Tax Code and the annually published Miscellaneous Fiscal Rules (*Resolución Miscelánea Fiscal*) contain the rules to obtain tax incentives for different industries and sectors. Incentives do not automatically apply to investments. They are generally contingent upon the satisfaction of the relevant eligibility criteria set out in the applicable laws and subject to an approval process. A centralized registry of firms and state owned enterprises receiving tax incentives is maintained on the Tax Administration Service website.

6. INVESTMENT LINKAGES

For the purposes of this section, research was focused on availability of incentive schemes to increase local sourcing, technology transfer and measures to improve information exchange between foreign investors and domestic suppliers. The National Council of Science and Technology (CONACyT), a government agency, is in charge of promoting R&D in Mexico and is operating several financial support schemes (such as INNOVAPYME, PROINNOVA, INNOVATEC) to promote R&D projects focused on green ideas, job creation, innovation and added value. Specific tax credits may also be obtained from the government if research and technical training is locally sourced.

The Mexican Income Tax Law provides eligible companies with a 30% tax credit for R&D expenses incurred for R&D activities carried out in Mexico, including process and design.

Many states offer tax/financial incentives for investors to establish/source their operations in the state such as: (i) tax reductions to local taxes including property tax and wages tax; (ii) donation of undeveloped land to certain productive projects; and (iii) payment of training programs for local employees. Any foreign investor who wishes to obtain local incentives may negotiate them directly with local authorities on a case-by-case basis.

7. OUTWARD FOREIGN DIRECT INVESTMENT

For this section, research was focused on whether there are any legal instruments specifically covering outward investment and if there are, whether they impose any restrictions on outward investment. Mexico does not have any laws or regulations that specifically regulate outward foreign direct investment (OFDI). The Mexican legal system does not include any limitation on OFDI by state-owned or private sector companies.

8. RESPONSIBLE INVESTMENT

For this section, research was focused on whether there are any measures within the country's investment legislation that are specifically targeted to ensure responsible investment. There are responsible investment measures in other laws and regulations of the country, but Mexico's foreign investment law and policy do not include an explicit reference. For example, the General Climate Change Law (*Ley General de Cambio Climatico*) enacted in 2012 outlines the objectives included in the Paris Accord and includes them in domestic law. Similarly, the General Health Law (*Ley General de la Salud*) along with the Federal Constitution provides a general right for health protection that must be provided by the government. Moreover, the Ministry of Economy through the commercial normativity office constantly publishes the Official Mexican Standards, which are technical rules for the production of goods and provision of services in Mexico. The Ministry of Economy drafts these standards and incorporates them into the Mexican legal system based on international and national standards. These laws and regulations apply to all domestic and foreign invested companies in Mexico, meaning there are no measures specific to foreign investment.

9. RECENT POLICIES ON NEW TECHNOLOGIES

This section considers Mexico's recent policy measures on new technologies (that may affect both domestic and foreign investors). Globally, policy measures on new technologies tend to focus on the enabling (sectoral) regulatory framework, as well as on incentives, digital standards, and clusters. At the same time, countries have taken measures that highlight their changing approaches to national security. Other emerging policies that, though not directly related to investment, as a matter of fact impact investments, are data localization requirements as well as rules and regulations concerning the treatment and use of digital data.

Mexico has been particularly active in regulating financial technology (Fintech). On March 6, 2018, the Mexican Congress approved and published modifications to Mexican laws on financial operations and credit institutions, together with the new Law to Regulate Financial Technology Institutions, (*Ley para Regular las Instituciones de Tecnología Financiera*) (Fintech Law). This new Fintech Law contains the rules for Fintech companies having operations in Mexico and introduces a legal framework for financial technology institutions and concepts such as virtual assets/cryptocurrencies, crowdfunding platforms and electronic payments. Following the enactment of the Fintech Law, on September 10, 2018, the Bank of Mexico and the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) published subordinate regulations and administrative rules (for example, General Provisions applicable to Fintech Institutions, Mexican Central Bank Circular 12/2018 and General Provisions pursuant to Article 58 (Anti-Money Laundering) of the Fintech Law) to give effect to the new Fintech Law.

Data Localization

There is no express data localization requirement under Mexican law. The Federal Law for the Protection of Personal Information Possessed by Private Parties (*Ley Federal de Protección de Datos Personales en Posesión de los Particulares*) effective as of July 6, 2010, and its subordinate regulations outline the obligations for private parties with access to personal information of data subjects. The law regulates how companies must collect, store, use, transfer and handle personal information of data subjects, including notices that should be given to the user and how such information is to be treated, including transfer of data. The law permits cross-border transfers of personal information, provided the data subject gives informed, prior consent.

10. CITY SPECIFIC REVIEW—MEXICO CITY

Mexico City is the capital of Mexico and the seat of the federal government. On January 29, 2016, it ceased to be the Federal District and is now officially known as Ciudad de México (or CDMX), an autonomous entity within Mexico with its own congress and a new constitution that came into effect on September 17, 2018. While federal laws currently govern Mexico City, legislative changes are anticipated given Mexico City's new political status.

Mexico City's local government has established additional incentives in order to attract investment into the city. The office in charge of handling such incentives is the SEDECO, or Economic Development Ministry (*Secretaría de Desarrollo Económico*), that has established the FONDESO, or Trust for the Social Development of the City (*Fondo para el Desarrollo Social de la Ciudad de México*). These incentives have ranged from reduction on local taxes (that is, payroll, real estate acquisition taxes) and local contributions (that is, registration with the public registry of property). The city's government directs incentives to industrial and maquila producers; nevertheless, there have also been specific sector-focused incentives for companies who initiate their operations in high technology sectors, for example reductions of 55% for payroll tax, 30% for land ownership tax and 80% for real estate acquisition tax. Currently, different programs are in place, which include direct transfers to companies in different sectors through micro credits or financing for entrepreneurs. These are directed to sectors that the government considers strategic or vulnerable, for instance cultural companies, women who are starting a business, or small businesses.

11. COMPETITION LAW & POLICY

For the purpose of this section, research was focused on merger control and leniency frameworks in the country.

The primary law governing competition in Mexico is the Federal Economic Competition Law (FECL) effective as of July 7, 2014, and its implementing regulations.

The Federal Economic Competition Commission (COFECE), established in 2013, is the main body in charge of implementing competition law and policy in the country.

A. Merger Control

Mexico's merger control regime is primarily governed by the FECL and its implementing regulations, administered by the Federal Economic Competition Commission.

A pre-merger notification is required if the merger meets the definition of concentration and the applicable monetary threshold. Article 61 of the FECL broadly defines "concentration" as a merger, acquisition of control, or any other act by means of which companies, associations, stock, partnership interest, trusts or assets in general are consolidated, and which is carried out among competitors, suppliers, customers or any other Economic Agent. The applicable monetary thresholds are the following:

- Transactions with value in Mexico exceeding 18 million times the value of the Unit for Measure (UMA) (approximately US$80 million); or
- Transactions involving the accumulation of more than 35% of the assets or shares of an undertaking with assets or sales in Mexico exceeding 18 million MU (approximately US$80 million); or
- Transactions that (i) imply an accumulation of assets or capital stock in Mexico exceeding 8.4 million MU (approximately US$37.3 million), and (ii) involve undertakings whose combined assets or annual sales in Mexico exceed 48 million MU (approximately US$213 million).

The Unit for Measure (*Unidad de Medida y Actualización* or UMA) is the economic reference in pesos to determine the amount of payment from obligations and alleged assumptions provided for in the federal law, for the states and Mexico City, as well as in legal provisions emanating from all of the above. In 2019 the UMA is equal to Mex$84.49 or approximately US$4.53.

If the target has no capital, assets or sales in Mexico, the transaction is exempted from the notification requirement. The parties may voluntarily file a notification even if the transaction does not meet or exceed the above thresholds or the parties may seek a non-binding opinion from the COFECE for planning purposes. There are special merger control rules that apply to certain sectors such as broadcasting and telecommunications sectors.

The exceptions to the pre-merger notification requirement are set forth in Article 93, which include the following types of transactions:

- Merger where the acquirer increases its equity participation in the acquired entity and such acquirer holds the control of the acquired entity since its incorporation or the acquisition of the control has been authorized by the COFECE in a prior merger-control proceeding;
- Formation of trusts, where the principal purpose is not to transfer the ownership of the assets;
- When the undertaking acquiring stock is an investment fund; provided such participation does not grant "relevant influence" in the management of the target. "Relevant influence" is not defined under Mexican law; and
- Acquisition of stock of companies listed on a recognized stock exchange, provided the participation in such company does not exceed

10% and the acquirer of stock, even if its participation does not exceed 10%, does not have the power for:

- Appointing or removing members of the board, directors or managers of the issuing company;
- Imposing, directly or indirectly, decisions on the general meetings of stockholders, partners or equivalent bodies;
- Holding ownership rights that allow, directly or indirectly, to exercise voting regarding ten percent or more of a legal entity's capital stock, or
- Directing or influencing, directly or indirectly, the management, operation, strategy or the main policies of a legal entity, by means of equity holdings, contractually or otherwise.

Pre-notification Meetings

Pre-notification contacts with the COFECE are advisable but not mandatory. Rules governing communication with COFECE are detailed under the Merger Guidelines. One or two meetings, taking place about one week prior to submitting the filing, usually suffice.

Fast Track Procedure and Information Requests

A "fast track" procedure is provided under Article 92 of the FECL for certain types of transactions where it is clear that a concentration will not hinder, damage or impede free market access and economic competition. In that procedure, COFECE is required to issue a confirmation that the transaction qualifies for this procedure within 5 working days after the filing. Following such confirmation, COFECE has to make its decision on the merger within 15 working days. This fast track procedure can be used only in a few limited scenarios. This is the case when the acquiring party is not active in markets related to the relevant market, does not compete with the target and: (i) the transaction implies the first entrance to the market for the acquiring party; or (ii) the incremental increase of the acquiring party's stake of a company without implying change of control.

In practice, the "fast track" procedure is rarely used. Decisions resulting from a fast track review are similar to those issued under the regular merger control process.

Pursuant to Article 90 of FECL, the COFECE has the power to issue only two official requests for information with statutory deadlines (10 and 15 business days respectively). The review procedure does not start until these two first two requests for information are fulfilled. In practice, COFECE might subsequently informally ask merging parties for additional information during the merger review procedure.

The COFECE may "stop the clock" by issuing an official request for information. The parties must then provide the requested information, at which point the review period "resets" at 60 working days (an additional 40 working days are available in complex cases). Informal information requests do not "stop the clock".

Remedies

The COFECE can approve a merger with both structural and behavioral remedies. The conditions or remedies imposed by the COFECE or agreed to by the COFECE must be proportionate to the intended correction of a concentration's effect. Notifying parties can submit a proposal of remedies either with or after the initial filing. In case the remedies are submitted at a later stage, this resets the review period at 60 working days (an additional 40 working days are available in complex cases).

File Access and Third-Party Intervention

Pursuant to Art. 83 of the FECL, notifying parties have the right to access the merger control file during the whole process, except for confidential information. The confidential information provided to the COFECE for the merger review is protected under Articles 124, 125 and 135, provided the parties clearly identify the confidential information and justify the reasons for the confidentiality. In addition, the COFECE may not explicitly reveal that a proposed transaction involving particular parties within a given industry is under review. But certain related facts may be revealed through any contacts the COFECE

has with third parties. The corporate names of the notifying parties would be published on the COFECE's website at the issuance of the first request for information.

Third parties are able to file a complaint against a notified transaction, and the arguments contained in the complaint may be taken into consideration by the COFECE. Additionally, third parties may also hold informal meetings with the relevant staff of the COFECE to express their concerns on a particular transaction. In any case, under Article 81, third parties are not considered to be parties to the notification process and are not granted access to the file.

Substantive Assessment

The main substantive assessment is whether the transaction will reduce, impair or prevent competition in Mexico. The COFECE examines whether a concentration will result in (a) an acquisition of market power conferring the ability to determine price levels or restrict output in the relevant market; (b) restrict competitors' ability to enter the market; and (c) facilitate monopolistic practices by the merging parties. The COFECE adopted safe harbors as follows:

- the increase of the Herfindahl–Hirschman Index (HHI) is less than 100 points;
- the HHI post-transaction is below 2,000 points; and
- the HHI after the transaction is between 2,000 and 2,500 points, difference between 100 and 150 points; and
- the parties post-transaction are not one of the four largest economic agents in the relevant market.

The COFECE must justify the reasons for not authorizing a transaction or in those cases when remedies are imposed in the final resolution. However, the COFECE does not develop a theory of harm when issuing the statement of objections. Under Article 63 of the FECL, the COFECE only considers the competitive effects of a transaction (and not other effects—for example on jobs, suppliers and so on) and the possibility that it would result in an undertaking acquiring or increasing a dominant position.

Penalties and Appeals

Pursuant to Article 127, failure to report a transaction meeting the thresholds is subject to a fine of up to 5% of the annual turnover of the directly involved parties (buyer and seller) in Mexico. Under Article 86, if a transaction is implemented without approval, it will be considered null and void and the COFECE may impose a fine as if the transaction was not reported.

The FECL does not establish any monetary sanction in the case of implementing a transaction prior to clearance. Nevertheless, if the transaction is considered to be unlawful or illegal (that is to say, a transaction that leads to the creation of a dominant position, or damages the market) the parties can be penalized with a fine of up to 8% of their annual domestic turnover under Article 127.

Non-compliance with remedies imposed in a merger control process may result in a fine of up to 10% of the annual turnover of the parties. In addition, the COFECE may order the unwinding of the concentration.

The COFECE decisions are final and therefore not subject to appeal at the administrative level, but pursuant to Article 28 of the Mexican Federal Constitution may be challenged before a Federal Specialized Court through an amparo trial. The function of a writ of amparo is to give persons (both individuals and juridical persons) an instrument to challenge acts of authorities (including administrative, judicial and legislative acts), for being contrary to the fundamental rights contained in the Constitution The amparo resolution may then be appealed before a Circuit Tribunal integrated by 3 judges.

Publicity and Deadlines for Merger Decisions

Only redacted public versions of the COFECE's decisions are published on the COFECE's website after officially being served to the parties.

Published decisions do not include the analytical underpinnings motivating them, unless the decision implied blocking or conditioning a transaction.

Pursuant to Article 90, the COFECE must issue a decision within 60 working days after (i) the filing, or (ii) the submission of the basic information, or (iii) the submission of additional information. This term may be extended in complex cases for an additional 40 working days. In fast track cases under Article 92, the COFECE has 5 working days after the filing to issue a confirmation that the transaction qualifies for this procedure. Following such confirmation, the COFECE has 15 working days to issue its decision.

B. Leniency Program

COFECE's leniency program is set out in Article 103 of the FECL, and in Immunity Program Guidelines issued by COFECE. It covers immunity from and reduction of administrative monetary punishment, criminal fine and jail time. It provides no immunity from or reduction in private damages that may be awarded as a result of the relevant conduct. The program can be applied to several applicants on a sliding scale. While the first applicant receives a reduction up to zero of the fine, the second applicant will have their fine reduced by between 30% and 50%. The third applicant will have their fine reduced by 20%-30%, and the fourth (or subsequent) applicant(s) will receive up to a 20% reduction in their fine. The leniency program in Mexico is available for individuals, in addition to corporations and other legal entities. The COFECE can revoke the leniency decision if full cooperation is not achieved by the parties.

Marker System

Per the Immunity Program Guidelines issued by COFECE, a leniency applicant will obtain a marker after applying for the leniency program. The first contact with the COFECE is often carried out by an applicant's counsel on a no-name basis, and may be through an informal meeting. It can be requested via email or voicemail at any time prior to the closing of the investigative phase of a procedure. COFECE will schedule the meeting at which the applicant will formally request the leniency protection and will provide all the information and documents in its possession on the anti-competitive conduct. If it is deemed that the information and documentation thus provided are not sufficient to initiate an investigation or to presume the existence of the cartel conduct, all the information and documentation submitted by the applicant will be returned. If the information and documentation are sufficient to initiate an investigation, the applicant will receive a conditional leniency resolution if the applicant is fully cooperative with the COFECE.

Confidentiality

Under Article 103 of the FECL, the COFECE is obligated to keep the identity of the applicant for leniency confidential at all times and with no exceptions. There are no applicable precedents indicating whether public prosecutors or courts would have access to leniency statements in damage claims proceedings.

Cooperation with other competition authorities

The COFECE frequently cooperates with other jurisdictions, in particular with the United States, but for confidentiality reasons, this cooperation does not focus on the leniency program. Under the COFECE Leniency and Fines Reduction Guidelines, the applicant may submit a waiver authorizing COFECE to make exceptions regarding its confidentiality obligation. This may be simple waiver pertaining to the identity of the applicant or a full waiver covering both procedural and substantive information related to the application. In any case, an applicant is not compelled to provide one for its application to be accepted.

ENDNOTES

[1] The WTO services sectoral classification list (W/120) is a comprehensive list of services sectors and sub-sectors covered under the GATS. It was compiled by the WTO in July 1991 and its purpose was to facilitate the Uruguay Round negotiations, ensuring cross-country comparability and consistency of the commitments undertaken. The 160 sub-sectors are defined as aggregate of the more detailed categories contained in the United Nations provisional Central Product Classification (CPC). The list can be accessed under the following link: http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc.

Services are categorized into 12 sectors:

1. Business services
2. Communication services
3. Construction and related engineering services
4. Distribution services
5. Educational services
6. Environmental services
7. Financial services
8. Health related and social services
9. Tourism and travel related services
10. Recreational, cultural and sporting services
11. Transport services
12. Other services not included elsewhere

[2] For the purpose of this research, 32 sectors have been identified. The list of sectors is therefore not exhaustive.

Primary:	Services:
1. Agriculture, Hunting, Forestry, and Fishing 2. Mining, Quarrying, and Petroleum	18. Electricity, Gas, and Water 19. Alternative Energy 20. Construction 21. Wholesale and Retail Trade 22. Hotels and Restaurants 23. Other Travel and Tourism-related Services 24. Logistics, Transport, and Storage 25. Telecommunications 26. Computer and Software Services 27. Financial Services including Insurance 28. Real Estate 29. Business Services 30. Professional, Scientific and Technical Services (Engineering, Architecture, and so on) 31. Health Services 32. Media and Entertainment
Manufacturing: 3. Agroprocessing, Food Products, and Beverages 4. Textiles, Apparel, and Leather 5. Chemicals and Chemical Products 6. Rubber 7. Plastic Products 8. Pharmaceuticals, Biotechnology, and Medical Devices 9. Metals and metal products 10. Non-metal mineral products 11. Wood and wood products (other than Furniture) 12. Furniture 13. Paper and paper products 14. Printing and publishing 15. Automobiles, Other Motor Vehicles, and Transport Equipment 16. Information Technology and Telecommunications Equipment 17. Machinery and Electrical and Electronic Equipment and Components	

LIST OF REFERENCE MATERIALS

Primary Sources

1. Foreign Investment Law published on December 27, 1993, as amended.
2. Regulation of the Foreign Investment and the Foreign Investment National Registry published on August 17, 2016
3. Manual of Procedures to Invest in Mexico, Directorate of International Affairs and Public Policy dated 30 August, 2016
4. *Ley de Inversión Extranjera*, as amended dated June 15, 2018.
5. *Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras*, as amended October 31, 2014.
6. Constitución Politica de los Estados Unidos Mexicanos, as amended dated January 27, 2016.
7. *Ley del Impuesto al Valor Agregado*, including its latest reform dated November 30, 2016.
8. *Ley del Impuesto sobre la Renta*, including its latest reform dated November 30, 2016.
9. *Ley General de Sociedades Mercantiles*, including its latest reform dated June 14, 2018.
10. *Ley General de Títulos y Operaciones de Crédito*, as amended dated June 22, 2018.
11. *Código Fiscal de la Federación*, including its latest reform, dated June 25, 2018.
12. United States Mexico Canada Agreement 2018.
13. *Ley General de Mejora* Regulatoria, including its latest reform, dated May 18, 2018.
14. *Ley Federal del Trabajo*, including its latest reform, dated May 1, 2018.
15. *Ley de Expropiación*, including its latest reform, dated January 27, 2012.
16. *Ley de Hidrocarburos*, including its latest reform, dated November 15, 2016.
17. *Ley para Regular las Instituciones de Tecnología* Financiera, as amended dated March 9, 2018.
18. *Ley Federal de Protección de Datos Personales en Posesión de los* Particulares, as amended dated July 5, 2010.
19. *Ley Minera*, including its latest reform, dated August 11, 2014.
20. General Agreement on Trade in Services (GATS)
21. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
22. Agreement on Trade-Related Investment Measures (TRIMs)
23. Agreement on Subsidies and Countervailing Measures (SCM)
24. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)
25. International Centre for Settlement of Investment Disputes (ICSID) Convention)
26. Articles of Agreement of the International Monetary Fund
27. North American Free Trade Agreement (NAFTA), 1994
28. Mexico-United Arab Emirates BIT, 2018
29. Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), 2018

Secondary Sources

30. "Mexico, Strategic Destination for Productive Investment", Promexico, 2016

31. "Doing Business in Mexico 2018", Baker McKenzie Abogados, S.C., 2018.

32. *Resolución Miscelánea* Fiscal para 2019, dated April 29, 2019

33. *Ley Orgánica del Poder Ejecutivo para el Estado de Guanajuato*, as amended dated March 12, 2019.

34. *Decreto para el Fomento de la Industria Manufacturera*, Maquiladora y de Servicios de Exportación, as amended January 6, 2016.

35. *Ley de Impuestos Generales de Importación y Exportación*, as amended on June 18, 2007.

36. *Ley Aduanera*, including its latest reform dated December 24, 2018.

37. *Ley de Ingresos de la Federación para el Ejercicio* Fiscal 2019, published on December 28, 2018.

38. *Criterios Generales de Política Económica para la Iniciativa de Ley de Ingresos y el Proyecto de Presupuesto de Egresos de la Federación Correspondientes Al Ejercicio* Fiscal 2019.

39. Plan Nacional de Desarrollo 2019-2024.

40. *Ley Federal sobre Metrología y Normalización*, as amended dated June 15, 2018.

41. *Reglamento de las Actividades a que se Refiere el Título Tercero de la Ley de Hidrocarburos*, published on October 31, 2014.

42. UNCTAD Investment Policy Hub (https://investmentpolicy.unctad.org/international-investment-agreements

43. I-TIP Services database (https://i-tip.wto.org/services/default.aspx)

44. Double Taxation Avoidance Agreements (http://taxsummaries.pwc.com/ID/Mexico-Individual-Foreign-tax-relief-and-tax-treaties)

This Investment Policy and Regulatory Review presents information on the legal and regulatory frameworks governing foreign direct investment and competition that affect businesses and foreign investors. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of **May 31, 2019**, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries: Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam.

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