CUATRECASAS

Doing business in Mexico

2022 Edition

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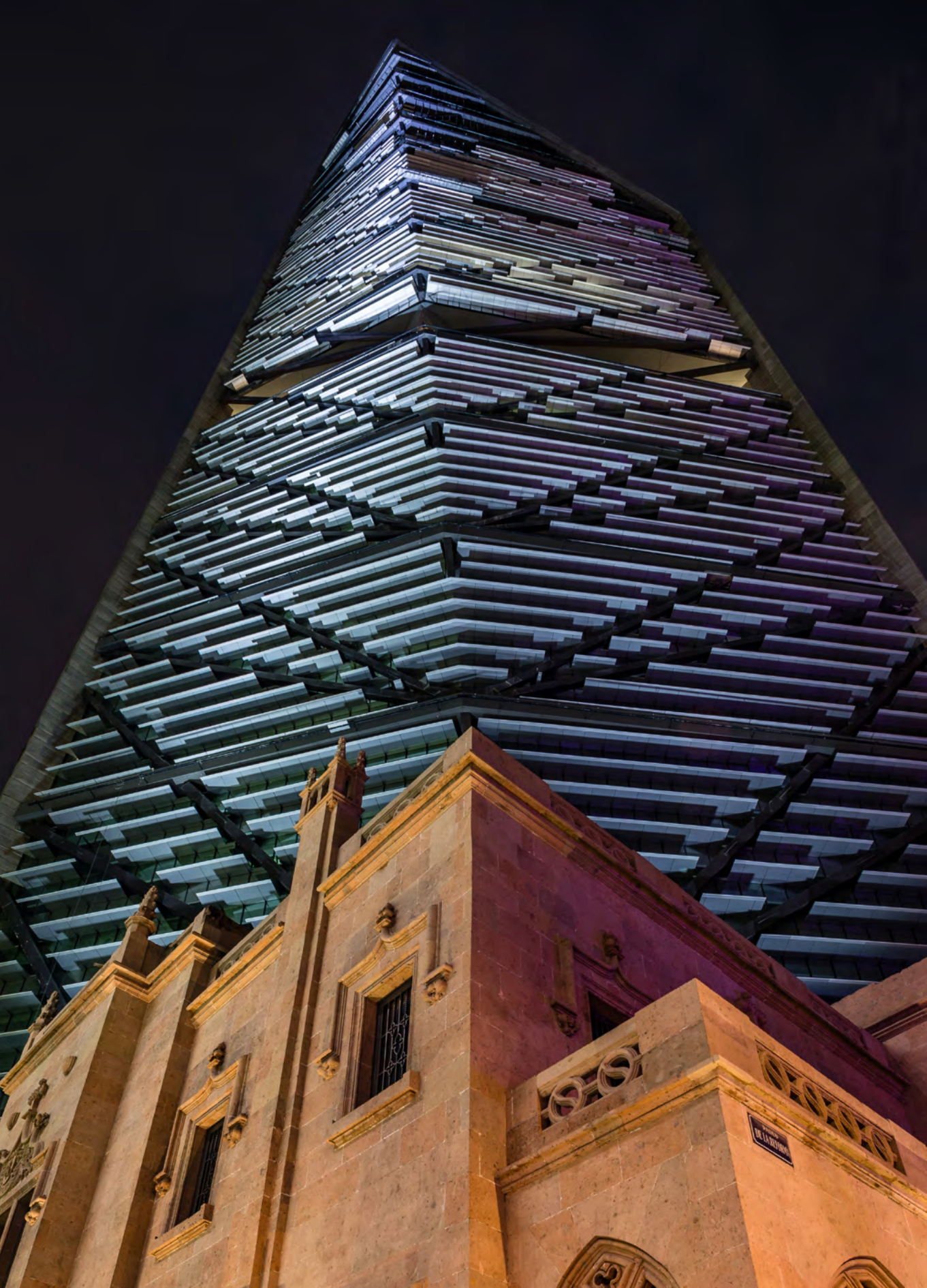
This guide provides general information to investors intending to operate in Mexico on legal issues on which they may need advice.

It is not intended, and cannot be considered, as a comprehensive and detailed analysis of Mexican law or, under any circumstances, as legal advice from Cuatrecasas.

This guide was drafted on the basis of information available as of April 4, 2022. Cuatrecasas is under no obligation and assumes no responsibility to update this information.

Content



Introduction

This guide provides an overview of key legal aspects for foreign investors interested in investing in Mexico. It is not intended to be comprehensive, but to address practical issues that will help investors considering an investment project in Mexico.

Cuatrecasas is a law firm that advises on all areas of business law through a multidisciplinary, diverse and highly qualified team of more than 1,200 lawyers and 26 nationalities.

We have a network of 27 offices in 13 countries and a strong presence in Spain and Portugal, where we are present in the main cities, and Latin America, where we have over 20 years of experience and a team of 125 professionals who operates from our offices in Chile, Colombia, Mexico and Peru. We have a sectoral approach and focus on all types of business, with extensive knowledge and experience in the most sophisticated advice, covering ongoing and transactional matters.

We focus on client services, incorporating ESG criteria and collective knowledge with innovation and state-of-the-art technology. We foment an innovation culture applied to the legal activity, which combines training, procedures and technological resources to contribute greater efficiency.

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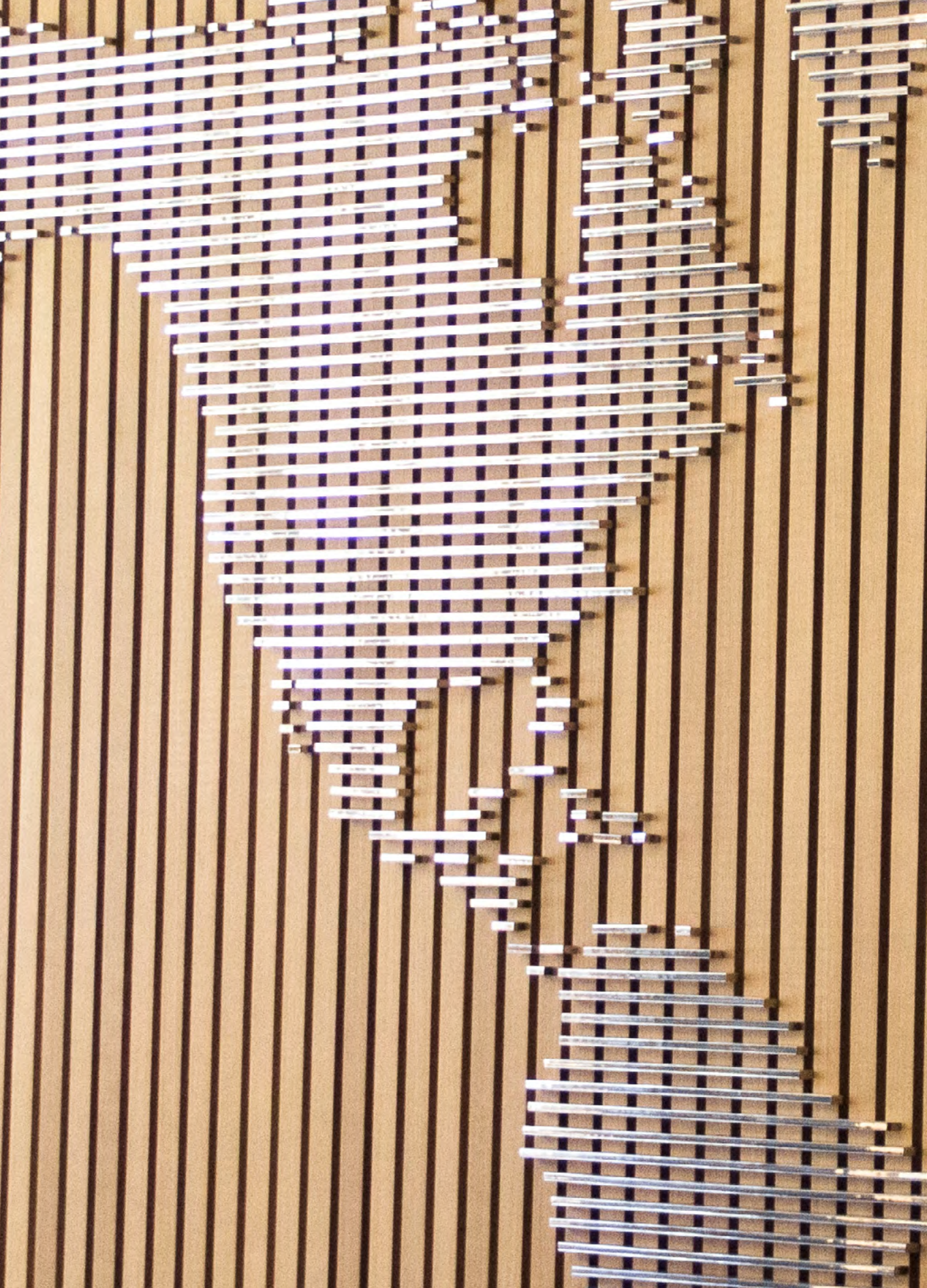


1 México at a Glance

1.1 Unique geo-strategic position

Mexico is attractive for foreign investment (in the first half of 2021, it was one of the top 10 major foreign direct investment (FDI) recipients). The Mexican government takes a favorable approach to foreign investment, approving important economic legal reforms to liberalize the market and invest in infrastructure.

Mexico's geographic location makes it an ideal location for creating and expanding distribution chains over America.

Mexico's location between North and South America, labor costs (which are comparable to Asian manufacturing costs), and almost 130 million inhabitants make it an ideal place from which to create and expand distribution chains across America. This position has gained importance with the approval of the United States–Mexico–Canada Agreement. Mexico's strategic position between coasts makes it an ideal location for renewable energies, as it has one of the highest levels of solar radiation in the world.

Mexico is the second largest economy in Latin America, representing 29.8% of its commerce (with the third biggest e-commerce market in Latin America). It also has many natural resources, placing the country between the most important locations in the mining industry worldwide. With Brazil, Mexico leads the trade services sector in Latin America, and during 2021, it held the second position worldwide as a tourist destination.

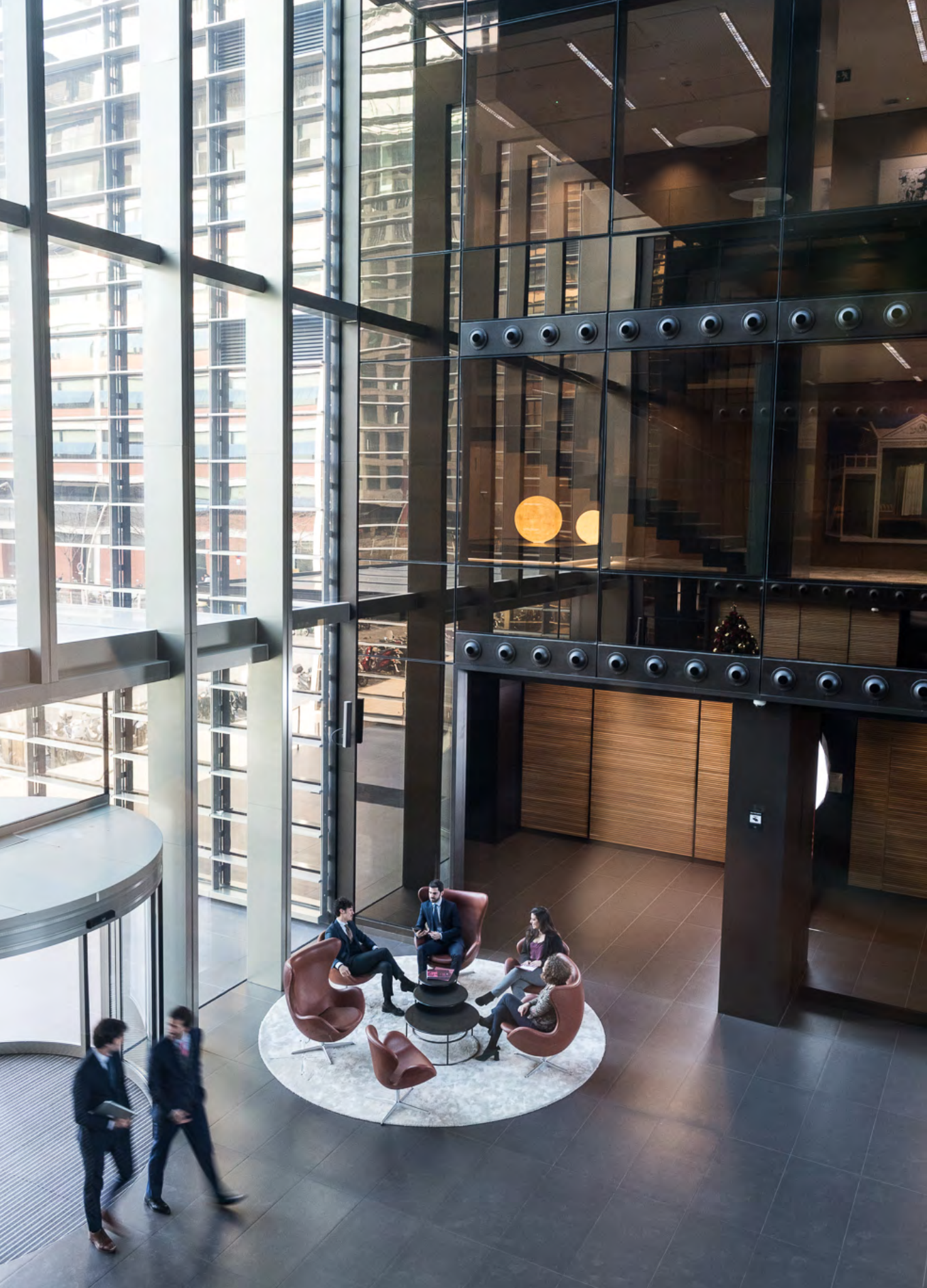
Spanish is a global language with over 591 million speakers. Mexico is the most populous Spanish-speaking country in the world.

1.2. Mexican legal system

Mexico is a federal republic consisting of a federal government and 32 state governments. The federal government is divided into executive, legislative, and judicial branches.

The executive power is exercised by the president, who is elected for one six-year term. The federal government's legislative branch is comprised of the Senate and the Chamber of Deputies. There are two senators per state and one deputy for every 250,000 people in a state. Senators serve a six-year term and deputies are elected for a three-year term. The judicial power is exercised by the Supreme Court of Justice, circuit tribunals and district courts.

Mexico has a civil law system (statutorily based), which means cases are decided individually by interpreting the law. Mexican case law does not have precedential value. Instead, there is jurisprudencia, which is only established when the Supreme Court and the federal collegiate courts issue five consecutive and consistent decisions on a point of law.



2 Ways of doing business

2.1. Setting up a business

Business corporations are recognized as entities independent from their partners or members, meaning they have a corporate veil.

Although incorporating a corporation or company is not a legal requirement for operating and carrying out commercial activities in Mexico, operating a business through a corporation or company protects the shareholders and partners from liability, which is limited to their contributions. Also, operating and controlling a business is usually easier when done through a commercial Mexican subsidiary, rather than a representative office, branch, or permanent establishment ("PE"), which are exposed to latent liability. Regarding trusts, the investor's liability mainly relates to complying with the trust's contractual terms.

Labor and tax implications are similar in the above entities. Corporations and companies have certain advantages over other entities (e.g., the corporate veil and double tax treaties, "DTTs").

Generally, there is no limit on a foreign investor's participation in the capital stock of Mexican legal entities, but some activities are subject to foreign investment limitations or need to be authorized by the local authorities (as explained below).

Foreign investors may carry out commercial activities and operations through different entities, each with their own legal and tax implications. Foreign investors should assess whether to incorporate a corporation or company, create a trust (*fideicomiso*), or establish a representative office, branch or PE in Mexico.

The two main types of legal entities are SAs and SRLs.

Limited companies

The two main types of legal entities in Mexico are limited liability stock corporations (*sociedades anónimas*, or "SAs", in the Spanish acronym) and limited liability companies (*sociedades de responsabillidad limitada*, or "SRLs," in the Spanish acronym), as well as their variations. By incorporating an SA or an SRL, liability for foreign investors, as shareholders/partners, is limited to the capital contributions they make to the Mexican corporation or company (corporate veil). Also, incorporating a corporation or company protects the foreign investors' assets, facilitates access to financing and, in the case of SRLs, provides certain tax benefits, as explained below.

Branch or representative office

Establishing a representative office, a branch or a PE does not limit a foreign investor's liability. In Mexico, creditors may file claims directly against the foreign investor's assets, as branches and representative offices are not protected by the corporate veil.

Trust provides more flexibility but could qualify as a PE for tax purposes.

Other alternatives

Another option for foreign investors is to establish a contractual entity, such as a trust. Mexican trusts enable settlors to transfer certain assets to the trustee to carry out specific actions determined by the settlor for a beneficiary. When compared to requirements for corporations and companies, a trust provides more flexibility. For example, corporate compliance obligations applicable to corporations do not apply to trusts. Also, if the trust's parties decide to terminate the trust, a simple termination clause will rule the agreement's dissolution. The trustee is an independent party with fiduciary duties over the contract and who ensures the trust's objectives are being fulfilled.

However, depending on the scope of the trust's activities, it could qualify as a PE for tax purposes, resulting in the trust's being considered a Mexican tax resident. Also, carrying out business through a trust is limited to its contractual terms, which the trust's parties must comply with, as well as other regulatory and tax requirements that may apply.

2.2. Main types of legal entities

Limited liability companies - Limited liability stock corporation (SA)

SAs must have at least two shareholders, but they may have an unlimited number, which determines the minimum capital stock in its bylaws. They are represented by shares, which can be transferred through an endorsement.

SAs may adopt a variable capital regime.

SAs and corporations may adopt a variable capital regime. That means a corporation may have a fixed capital stock and a variable capital stock simultaneously, which may increase or decrease without having to amend the bylaws or registering with public registries (unlike fixed capital stock).

The governing body of SAs is the shareholders meeting. Subject to being regulated in the bylaws, unanimous shareholders' resolutions may be adopted instead of a shareholders meeting, provided all shareholders confirm the resolutions in writing. At least one shareholders meeting must be held each year, which is called to resolve on the company's financial statements, the appointment or ratification of board members, and the compensation to be paid to the management body, if any.

SAs may be managed by a sole director or a board of directors with at least two directors.

A statutory auditor (comisario) is also required by law. The statutory auditor can request financial information from the management body, review the corporate books, prepare a report on the information provided by the management body, and call a shareholders meeting.

Limited liability company (SRL)

SRLs' equity contributions are called equity quotas (not shares) and

SRLs are considered pass-through entities for US tax purposes.

are not represented by a specific document. The transfer of equity quotas is made by assignment (not endorsement) and must have been previously approved by the majority of the company's partners. The SRL is mainly used for closely held companies, where super majorities and restrictions on transfers of equity are the preferred statutory provisions.

A minimum of two partners is required to incorporate an SRL., but the maximum number of partners is 50. The partners determine the minimum fixed capital in the bylaws, and, as with SAs, SRLs may adopt a variable capital regime.

The regulation of both the partners meeting and the management body is similar to the regulation of SAs, but there is no obligation to appoint a statutory auditor.

US investors often use this type of company in Mexico because, according to the definition of "eligible entities" under Reg. § 301.7701-3 of the US IRS Code, SRLs are considered pass-through entities for US tax purposes.

Limited liability stock investment promotion corporation (*Sociedades Anónimas Promotoras de Inversión, or "SAPIs"*)

A SAPI is a type of SA. Its main advantage is the possibility of applying the rules of a listed public entity governed by the Securities Market Act (Ley del Mercado de Valores). However, SAPIs are not public entities regulated by the stock market.

SAPIs differ from regular SAs because they (i) are easier to convert into public entities; (ii) have more flexibility to execute shareholders agreements under the options established in the Securities Market Act; (iii) require lower percentages to exercise minority rights; and (iv) can apply the rules of a listed public entity governed by the Securities Market Act.

SAPIs may (through a shareholders agreement or under the bylaws) (i) impose restrictions on voting and transfer rights; (ii) allow shares with different economic or voting rights to be issued; (iii) establish mechanisms if the shareholders do not agree on specific corporate decisions; and (iv) allow the company to acquire its own shares.

Trusts

The main types of trusts are regulated in the General Negotiable Instruments and Credit Transactions Act (Ley General de Títulos y Operaciones de Crédito).

Any kind of good or right may be transferred to the trust's estate, except those listed by law as strictly personal to the owner. The assets are legally considered transferred to the trustee, and the trustee will be obliged to manage the assets based on the trust's purposes. To enter into the trust

The trustee must be an authorized institution.

agreement, the settlor must have ownership rights over the trusted assets. Under law, one or more settlors can execute this agreement. The trustee must be an authorized institution, such as a financial institution incorporated as a bank, or an insurance institution. The beneficiaries may be appointed in the trust agreement or in a subsequent agreement, and trustees cannot be appointed as beneficiaries, except when the trust's purpose is to fulfill pending obligations established in another agreement with the trustee.

The following trusts are prohibited:

i. secret trusts;

ii. trusts in which several beneficiaries are appointed to succeed one another at the time of their death; and

iii. trusts with a term of more than 50 years, in which a private company or a non-charity organization was appointed beneficiary.

Main reasons for terminating a trust:

i. It has fulfilled its purpose.

ii. Its purpose became impossible to fulfill.

iii. Dismissal by the settlor when this right was granted in the trust.

iv. It has frauded third parties.

Trusts with real estate assets must be registered in the Public Registry of Commerce where they are located.

Trusts with real estate assets must be registered in the Public Registry of Commerce where they are located. If the trust's assets include movable property, the trust must also be registered in the Sole Registry of Movable Properties.

The main types of trusts are:

i. investment trusts, which usually involve private equity and a technical committee to decide on the investments;

ii. real estate trusts, for funding real estate projects;

iii. shares trusts, in which a settlor grants its shares in a company to the trustee for several purposes, including voting interests; and

iv. security trusts, which are a common way to secure payment obligations in credit agreements (which prioritize the flow of payments that enter into the trust, including the payment of the principal obligation).

2.3. Incorporating a legal entity: costs and timing

Steps to follow when incorporating a legal entity:

- Company name: Obtain a certificate of clearance from the Ministry of Economy (*Secretaría de Economía*) to use the NewCo's proposed name. The certificate states that the chosen name is available and that the NewCo can use it.

- Public deed of incorporation: Submit a deed of incorporation to a notary public (the NewCo or its authorized representatives can do this).

  To be represented at the incorporation, powers of attorney must be granted to the representative, notarized by a notary public and apostilled under the Hague Convention procedure.

  The timing for drafting the bylaws will depend on the complexity of the negotiations among the shareholders.

- Register the public deed in the local Public Registry of Commerce (*Registro Público de Comercio*) for the corporation or company's corporate address. Registration takes up to 5 to 10 business days.

- Register the corporation or company with the Tax Administration Service ("SAT") to obtain the tax identification number, called the Registro Federal de Contribuyentes ("RFC"). The corporation or company needs the RFC to engage in operations, pay taxes, open bank accounts, issue invoices, and carry out other transactions. Registration takes place on the date of the appointment with SAT.

- If the corporation or company has foreign investment in its capital stock, it must be registered with the National Registry of Foreign Investment (*Registro Nacional de Inversión Extranjera*), and notices must be filed within the given quarter in the following cases:

  i. Change of corporate name;

  ii. Change of capital stock structure when it involves a foreign investment exceeding MXN $20,000,000;

  iii. Change of tax or corporate address; and

  iv. File annual notices when the corporation or company's assets or liability accounts exceed MXN $110,000,000.

- Register the corporation or company with the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social*) to obtain its employer registry. Registration takes between 5 and 10 business days.

Fees and expenses to incorporate an SA or SRL—excluding legal fees—usually range from MXN $20,000 to MXN $40,000.

As of tax year 2022, the Federal Tax Code (*Código Fiscal de la Federación*) establishes the new figure of "controlling beneficiary" (*beneficiario controlador*). A controlling beneficiary is considered to be the individual or group of individuals who, directly or indirectly, obtain a benefit from their participation in a corporation, company or trust, and who, directly, indirectly or contingently, exercise control of either the legal entity or the trust.

Corporations, companies, trusts, notaries public or any persons involved in incorporating those legal entities are obliged to request and obtain all the necessary information to identify the controlling beneficiaries (e.g., marriage certificates of the shareholders, if applicable, birth certificates, and tax identification numbers). This has made the process of incorporating a legal entity or trust more time consuming due to the detailed information that the SAT requests.

The full process of incorporating a Mexican SA or SRL, such as opening bank accounts, granting additional powers of attorney or appointing directors/managers, may take between six and eight weeks.

To establish a representative office or branch, foreign investors must obtain authorization from the Ministry of Economy.

2.4. Establishing a representative office or branch

To establish a representative office or branch, foreign investors must obtain authorization from the Ministry of Economy.

To obtain this authorization, they must prove (i) they are validly incorporated and exist under the laws of the country of origin; and (ii) their articles of association, bylaws and any other incorporation documents do not breach any Mexican provisions of public order. They must also appoint a legal representative located in Mexico.

The Ministry of Economy usually grants authorization within two weeks. Once authorization is granted, the foreign investor's articles of association, bylaws, and any other incorporation documents, as well as the powers of attorney for the legal representative in Mexico, must be formalized with a Mexican notary public.

The foreign investor also needs to register with the SAT to obtain the RFC. In this registration process, the foreign investor has to declare the activities it will carry out in Mexico, and that all income arising from its activities will be taxable in Mexico. Once the RFC has been obtained, the representative office or branch will be considered a PE for tax purposes.

2.5. Restrictions on foreign investment

Foreign investors can participate in Mexican corporations or companies, except for certain restricted activities.

There is no limit on the extent to which foreign investors can participate in Mexican corporations or companies, except for activities reserved for the state or activities reserved exclusively for Mexicans or Mexican companies.

Foreign investments are restricted as follows:

- Up to 10% in co-operative production companies.
- Up to 49% in:
    i. manufacturing and distributing explosives, firearms, ammunition and fireworks, excluding the acquisition and use of explosives for industrial and mining activities and explosive mixtures for use in those activities;

    ii. printing and publication of newspapers exclusively for domestic distribution;

    iii. series T shares (i.e., a percentage of the total share capital that represents the proportion of agricultural real property and cattle and timber real property held by the company, which is subject to a special stock regime under the Agrarian Act of Mexico) issued by companies holding agricultural, cattle and timber real property;

    iv. freshwater fishing and sea water fishing in the exclusive economic zone, excluding aquaculture;

v. integral port administration;

vi. boat piloting activities for internal navigation;

vii. commercial sea transport for internal navigation and cabotage, excluding cruise tourism;

viii. exploiting dredging and other naval artefacts for construction, conservation and port operations;

ix. supplying fuel and lubricants for sea vessels, aircraft and railroad equipment;

x. radio and television broadcasting; and

xi. regular and irregular air transport services.

- Up to 49%, subject to the approval of the Foreign Investment Commission, in:

  i. port services to enable ships to carry out inland navigation operations, such as towing, mooring and barging;

  ii. shipping companies that use ships solely for high-seas traffic;

  iii. port services for internal navigation vessels, such as tugboats, and small boat navigational services;

  iv. oncessionaire or permissionaire companies of airfields for public service;

  v. private educational services for kindergarten, primary, secondary, medium-superior and superior schools and combined schools;

  vi. legal services; and

  vii. building and operating general railways, and public railway transportation services.

Mexican corporations and companies must include a specific clause in their bylaws.

Under the Constitution of Mexico and the Foreign Investment Act, Mexican corporations and companies must include a specific clause in their bylaws, under which their foreign shareholders and partners, to be entitled to legally acquire assets in Mexico, are considered Mexican nationals with regards to their shares and equity quotas in the corporation or company, as well as the assets, rights, acquisitions and interest of the corporation or company in Mexico, waiving the protection of their foreign governments. If this requirement is not met, foreign investors will be at risk of losing all their interests to Mexican nationals.

Main aspects: SAs and SRLs

(SA)

CAPITAL	
Minimum requirement	There is no minimum requirement. Minimum of two shareholders; no maximum.
Divided into	Nominative shares represented by stock certificates issued on behalf of shareholders. These certificates may or may not have a par value.
Disbursement	At least 20% of the value of each share must be paid-up on incorporation. All shares must be paid-up within one year, starting from the date of incorporation.
Voting rights	Unless otherwise stated in the bylaws, each share has equal voting rights for its shareholder. SAs can issue different series of shares, which may include: • shares without voting rights or with voting caps; • additional corporate rights other than voting rights, or grant exclusive voting rights; and • the right to grant a veto or require the affirmative vote of one or more shareholders. All shares will be entitled to participate in the SA's profits.
Contributions in kind	If the shares are to be paid with contributions in kind, the value of the share must be fully paid on incorporation. If there is a capital increase, shares paid partially or fully in kind must be deposited in the SA's treasury for two years. If, during this period, the value of the assets is lower than 25% of their value on the date of the transfer, the respective shareholder must pay the difference and the SA will have a preferential right over any creditor for the value of the deposited shares.
TRANSFER	
Restrictions on transfers	Unless otherwise provided in the bylaws, shares can be freely transferred between shareholders or third parties.
CAPITAL DECREASE	
Mandatory capital decrease	If the SA suffers losses in the capital stock, it must be reintegrated or decreased before any dividends are paid to the shareholders. If the shares have not been paid within one year from the date of incorporation, the respective shareholders will be entitled to withdraw any deposited amounts. If, in a shareholders meeting, a shareholder votes against the meeting's resolution to transform the SA, it will be entitled to leave the SA and be reimbursed for its shares.

(SA)

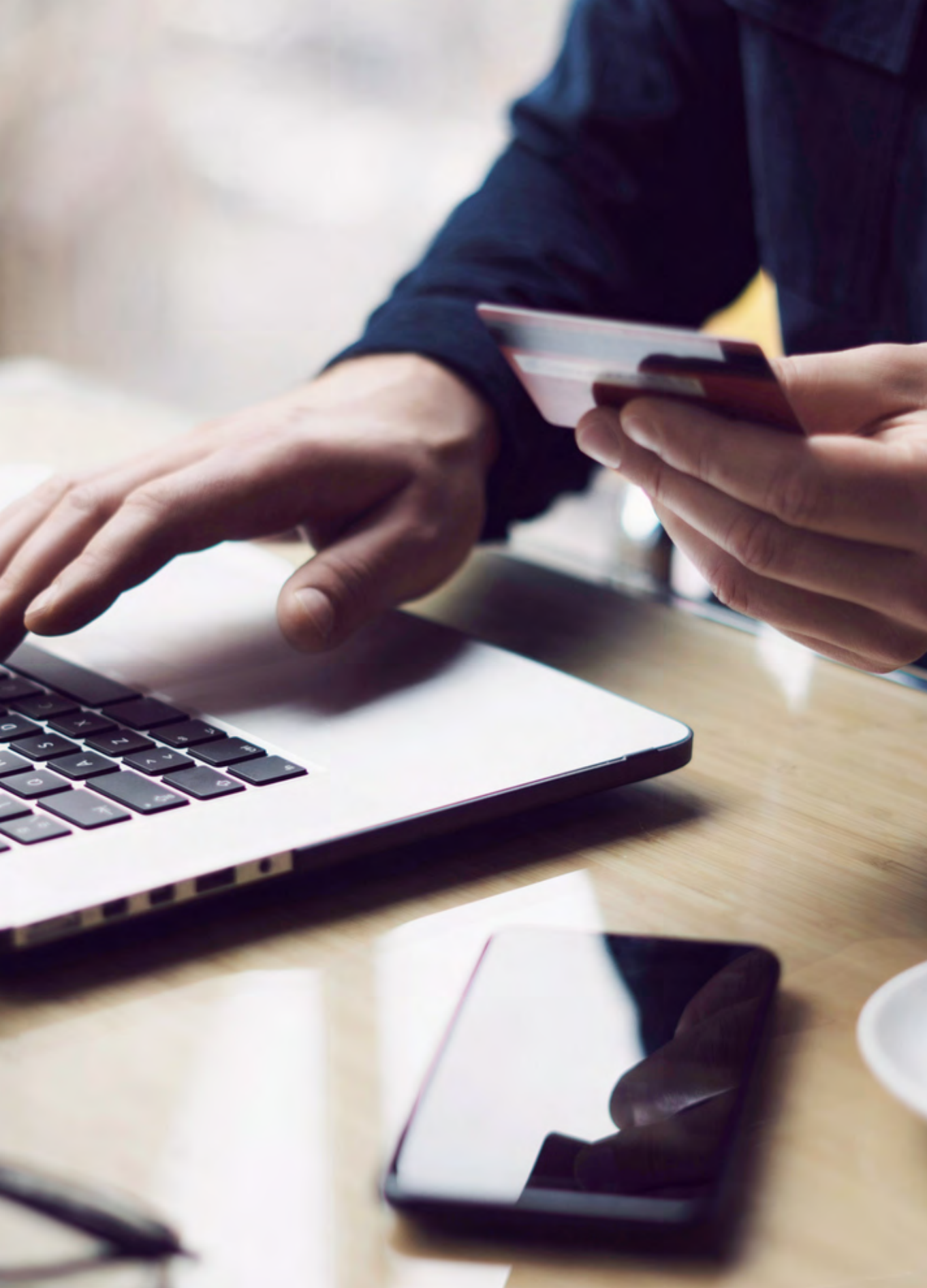
Publicity and opposition term	A fixed capital reduction to be made by reimbursing the respective shareholders must be published in the Ministry of Economy's Electronic Commercial Publications System. The SA's creditors will be entitled to oppose this capital decrease judicially within a period starting on the date the SA decided to make a capital decrease and up to five days from the last publication. The respective shareholders must notify the SA of a variable capital reduction, and it will not be effective until the end of the current tax year.
CORPORATE GOVERNANCE	
General meeting	General meetings are classified as ordinary or extraordinary meetings, depending on the items or resolutions on the agenda. General meetings can be summoned by the sole director or the board of directors, by the statutory auditor, or by shareholders holding at least 33% of the SA's capital stock. The meeting call must be published in the Ministry of Economy's Electronic Commercial Publications System at least 15 days before the meeting date. For ordinary meetings, the attendance quorum at first call is 50% of the outstanding shares. There is no minimum attendance quorum at second call. At first call, resolutions require the affirmative vote of the majority of the outstanding shares present at the meeting. A minimum affirmative vote is not required at second call. Ordinary meetings must be held at least once a year, within the first four months of the following tax year, to approve the SA's annual accounts for the previous tax year. For an extraordinary meeting, the attendance quorum at first call is 75% of the outstanding shares. There is no minimum attendance quorum at second call. At first and second call, resolutions require the affirmative vote of at least 50% of the outstanding shares.
Administrative body	The administrative body can consist of a sole director or board of directors with at least two directors, who may be shareholders or third parties. Whenever the board of directors is composed of three or more directors, the shareholders with at least 25% of the SA's capital stock will be entitled to appoint at least one director.
Surveillance body	The surveillance and supervision body of the SA members can be one or more temporary and revocable statutory auditors, who may be third parties. Whenever the SA has three or more directors, the shareholders with at least 25% of the SA's capital stock will be entitled to appoint at least one statutory inspector.

(SRL)

CAPITAL	
Minimum requirement	MXN $2.00. At least two partners. Maximum fifty partners.
Divided into	Equity quotas, which may have different values and classes but must be multiples of MXN $1.00. A partner cannot have more than one equity quota. Unless the SRL's bylaws regulate the division right and partial transfer, equity quotas may not be divided.
Disbursement	At least 50% of the value of each equity quota must be paid at incorporation.
Voting rights	Each partner has one vote for each MXN $1,000 of the capital stock that it holds, unless otherwise regulated in the bylaws.
Contributions in kind	Not allowed
TRANSFER	
Restrictions on transfers	Unlike shares, equity quotas are not represented by negotiable stock certificates and are only transferrable in the cases stated in the law. All transfers of equity quotas and admissions of new partners need the affirmative vote of the partners representing the majority of the capital stock. If a partner wants to sell its equity quotas to a third party, the rest of the partners will have a right of first refusal to acquire those equity quotas.
CAPITAL DECREASE	
Mandatory capital decrease	If the SRL suffers losses in the capital stock, it must be reintegrated or decreased before any dividends are paid to the partners.
Publicity and opposition term	A fixed capital reduction to be made by reimbursing the respective partners must be published in the Ministry of Economy's Electronic Commercial Publications System. The SRL's creditors will be entitled to oppose this capital decrease judicially within a term starting on the date the SRL decides to make a capital decrease and up to five days from the last publication. The respective partner must notify the SRL of a variable capital reduction, and it will not be effective until the end of the current tax year.

(SRL)

CORPORATE GOVERNANCE	
General meeting	Partners meetings can be called by the sole manager or the board of managers, by the statutory auditor, or by the partners holding at least 33% of the SRL's capital stock. Unless otherwise stated in the bylaws, the meeting call must be delivered by certified letter to each partner with an acknowledgment of receipt, at least eight days before the meeting date. For a meeting to be held, the attendance quorum at first call is at least 50% of the equity quotas (there is no minimum attendance quorum at second call). At first and second call, resolutions require the affirmative vote of the majority of the equity quotas represented at the meeting. Any change to the SRL's bylaws requires the affirmative vote of at least 75% of the equity quotas. Increasing the partners' obligations also requires the affirmative vote of at least 75% of the equity quotas. The partners meeting must be held at least once a year.
Administrative body	The administrative body can consist of a temporary and revocable sole manager or a board of managers with at least two managers, who may be partners or third parties.
Surveillance body	A surveillance body is optional. If there is one, it may be composed of third parties.



3 Taking security

3.1. Overview

In most types of business and transactions that companies and individuals carry out (e.g., mergers and acquisitions, corporate restructurings, and other projects), determining the source of financing is critical for the business or transaction to be carried out correctly. If among the main liquidity sources available in the market, private equity, capital markets or banking and non-banking financing, financing is chosen, several matters must first be resolved.
For example, if the lender is a financial entity, a fund, or even a shareholder, it would be necessary to determine (i) the amounts needed, (ii) the most suitable financial specifications, and (iii) the purpose of the financing, among others. All these considerations should be made on a case-by-case basis, as well as how the security package applicable to the financing should be chosen.

3.2. Preliminary considerations

There are two main types of guarantees: in rem guarantees and personal guarantees.

Types of guarantees

As in many other civil law countries, there are two main types of guarantees:

a. ***In rem*** guarantees, whereby an asset or other item is charged to ensure certain obligations are fulfilled.

b. **Personal** guarantees, whereby a person guarantees that certain obligations are fulfilled.

In case of insolvency, these guarantees rank differently and there are differences in their enforcement.

In case of insolvency, in rem and personal guarantees rank differently.

Main types of guarantees in Mexico:

a. **Mortgage:** The owner of real estate creates a security interest over its property to secure the repayment of a debt.

b. **Mortgage over economic units or production facilities:** There are two types: (1) industrial mortgage (hipoteca industrial); and (2) secured working capital (liquid assets) or fixed assets loan agreements, which are also known as chattel mortgages and are referred to in Mexico as *créditos de habilitación o avío and refaccionario*.

c. **Pledge:** A debtor or a third party creates a guarantee to secure the fulfillment of an obligation and its priority payment right through delivering (or retaining in case of floating liens) movable assets subject to transfer.

d. Security trust: Property may be transferred to a trustee (financial institution authorized to act as trustee) to be held in trust for guarantee or security purposes. The settlor transfers assets to the trustee to ensure obligations are fulfilled in favor of the beneficiary.

e. Personal guarantees: Joint obligations (obligaciones solidarias y mancomunadas) and corporate guarantees (*fianzas*).

3.3. Overview of the most common types of security

In this section, we provide an overview of some of the options available when taking security in Mexico. However, this is a summary only, and there are other types of security available under Mexican law, and the suitability of each option must be reviewed on a case-by-case basis.

Real Estate Mortgage

According to the Mexican Civil Code, a mortgage may be constituted over real state, and it covers any improvements made by the owner, movable goods permanently attached to the real estate and new structures built on the real estate, provided all of the above are expressly mentioned and included. Therefore, real estate mortgages must be specific to the mortgaged assets. A real estate mortgage must be executed in writing, formalized before a notary public and registered with the Public Registry of Property.

For a mortgage to be effective against third parties, it must always be registered. Mortgages may be executed unilaterally or through an agreement. Other provisions under Mexican law foresee the existence of mandatory mortgages as opposed to voluntary ones (i.e., through an agreement) whenever a mortgage has to be executed to comply with a legal requirement.

Once a mortgage is granted, due to its in rem nature, the mortgage will cover the property at all times, even if the property is transferred to a third party.

Mortgages over an economic unit or production facility

As explained, there are two types of mortgages over a business unit:

a. Industrial mortgage (*hipoteca industrial*). Reserved to Mexican financial institutions, this type of in rem security is regulated in the Credit Institutions Act (*Ley de Instituciones de Crédito*) and covers the whole economic unit that is considered as the company, particularly all present and future real estate and movable assets that the company uses that are considered an economic unit, including cash and accounts receivable. Therefore, unlike real estate mortgages, which are specific to the identified property, industrial mortgages may be general.

b. Secured working capital (liquid assets) or fixed assets loan agreements. Also known as chattel mortgages and referred to in Mexico as *créditos de habilitación o avío* and *refaccionario*, these financing transactions are aimed at the agricultural, livestock, forestry and fishery sectors, granted either for the financed acquisition of working capital and other raw materials, named *habilitación o avío*, or for the financed acquisition of fixed assets, named *refaccionario*. As part of these types of financing transaction, the debtor must grant as collateral the production unit being financed. The creditor is granted a general security that covers the assets that the debtor purchases with the financing resources (e.g., working capital, raw materials, and fixed assets) and the proceeds of those assets until the secured obligations have been fulfilled. These transactions must be registered with the Sole Registry of Security Interest over Movable Assets (*Registro Único de Garantías Mobiliarias*).

There are also other types of mortgages regulated by special laws, such as ship mortgages (Navigation and Maritime Commerce Act), and mortgages over general communication pathways (General Communication Pathways Act).

Pledge agreements

Under Mexican law, there are two types of pledges: the ordinary or 'traditional' pledge agreement and the non- possessory pledge agreement.

a. Ordinary pledge. The traditional pledge may be granted over securities, credit rights and other assets or goods. This pledge requires the material delivery of the pledged assets to the creditor to ensure the secured obligation is fulfilled. For example, if the pledge is granted over shares, share certificates must be endorsed in guarantee in favor of the creditor and an annotation must be made in the corresponding corporate registry.

   As with mortgages, ordinary or traditional pledge agreements may be created in first, second or even lower priority with respect to other creditors, allowing for mezzanine or other subordinated financing structures to be implemented without further complications. Cash can be pledged in favor of a creditor under this type of pledge agreements, in which case, if the pledgor defaults on the secured obligations, the creditor may use the pledged cash to repay the defaulted secured obligations.

b. Non-possessory pledge. A non-possessory pledge may be granted over present or subsequently acquired movable assets, including machinery, equipment, tradenames,

royalties, and accounts receivable. This type of pledge does not involve the physical delivery of the pledged asset. Unless otherwise agreed or restricted in the pledge agreement, the pledgor has the right to use the pledged assets, combine them with others, use them to manufacture other assets, receive and use any revenue the pledged assets generate, and sell them in the pledgor's ordinary course of business. This sort of pledge becomes relevant in transactions where the actual possession of the goods cannot be transferred to the creditor (e.g., operational assets, or project-related assets such as wind farms, oil platforms, or any other large equipment). Non-possessory pledge agreements must be in writing, formalized before a notary public and registered with the Sole Registry of Security Interest over Movable Assets (*Registro Único de Garantías Mobiliarias*). Assets pledged under a non-possessory pledge agreement may not be pledged again in favor of other creditors, even if granted with a lesser priority, as this is considered a felony.

If the pledgor becomes insolvent and fails to fulfill the secured obligations as a consequence, any creditor may file a claim to force the pledgor to fulfill the obligations and pay any amounts owed. However, obligations secured by a mortgage or a pledge can be handled through separate legal procedures up to the pledged or mortgaged assets' value, as the obligations are secured by a specific asset regardless of whether the pledgor is solvent or insolvent.

If the mortgagor or pledgor breaches the secured obligations, the creditor may foreclose the mortgage or pledge through (i) special mortgage proceedings; (ii) an extrajudicial foreclosure process for non-possessory pledge agreements, if so agreed; or (iii) an ordinary foreclosure process.

Personal guarantees

Personal guarantees are obligations individuals or entities assume to cover their own debts or those of a third party.

Depending on the sources of the guarantee, these may have different specifications or characteristics. Personal guarantees may be granted as joint and several obligations, solely several (*obligación solidaria, obligación mancomunada*), surety (fianza), or standby letters of credit or performance bonds (cartas de crédito) issued by bonding or financial institutions that must be licensed and regulated by the Mexican government. These personal guarantees allow for other limitations or agreements to be included. They are canceled or terminated (i) by release, (ii) when the secured obligation is terminated, or (iii) when their term ends. The institution or entity granting the personal guarantee may also be counter guaranteed or backed by another personal guarantee.

The most creditor-friendly personal guarantees are standby or performance letter of credits, but they usually entail a high cost for the guarantor. Although they are acknowledged by the Mexican legal framework in two provisions, as in most countries, standby letters of credit are mainly regulated by the International Standby Practices (ISP98), and performance bonds are mainly regulated by the International Chamber of Commerce's Uniform Rules for Contract Bonds.

For surety bonds (*fianzas*), the surety company that grants the policy imposes specific collection requirements.

Security trusts

A security trust is the most flexible security mechanism available under Mexican law.

The debtor or guarantor, named the "settlor," transfers the title over the collateral to a financial institution authorized to act as a "trustee" until the secured obligations in favor of the creditor—named the beneficiary—have been fulfilled or defaulted on.

Once the secured obligations have been fulfilled, the trustee returns the property of the collateral to the settlor. In case of default, depending on the agreed terms under the trust agreement, the trustee either starts an auction process over the collateral in favor of the beneficiary, or directly allocates the collateral to the beneficiary.

A security trust is the most flexible security mechanism available under Mexican law.

The trustee may only manage the collateral according to the terms and conditions established in the trust agreement and the instructions issued by the parties, usually both the settlor and the beneficiary.

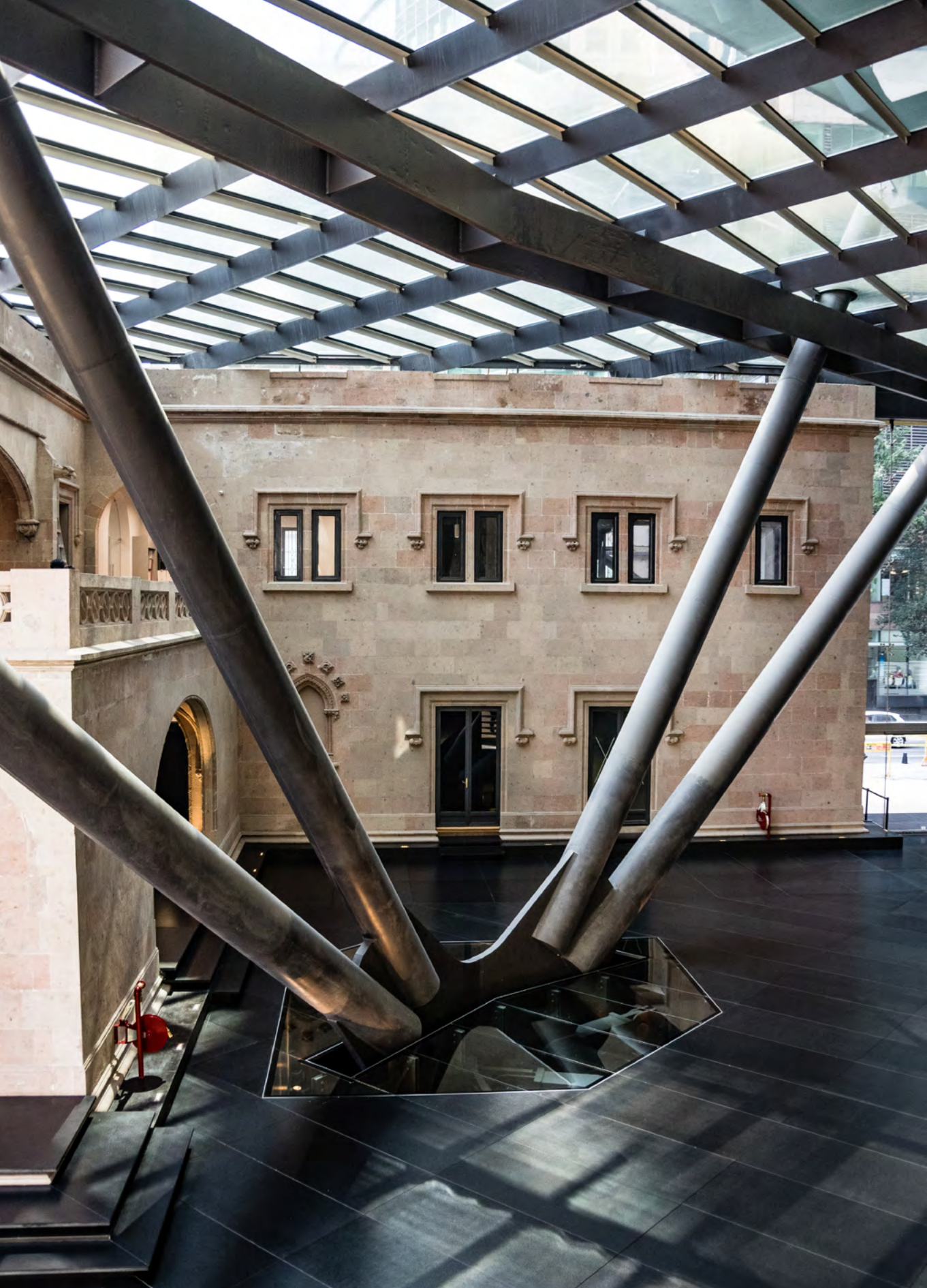
The formalities to perfect a security trust depend on the assets being contributed as collateral. However, a trust agreement must always be executed in writing. Usually formalized before a notary public and registered with the Sole Registry of Security Interest over Movable Assets (*Registro Único de Garantías Mobiliarias*), if real estate property is transferred, the trust must be registered with the Public Registry of Property of the location of the real estate, or if the collateral includes intellectual property, with the Mexican Institute of Industrial Property (*Instituto Mexicano de la Propiedad Industrial*).

Below we summarize the main characteristics of a security trust:

a. Assets are generally considered bankruptcy remote, as they leave the settlor's property and effectively become property of the trust. Certain specific requirements must be met, and if met, the transfer is considered a true sale, thereby protecting the secured parties if the grantor becomes bankrupt or insolvent. One of the most important provisions related to trusts is the existence of a clawback period of 270 days (extendable to 540 days or more) under the Mexican Bankruptcy Act. If the assets are transferred within that period, the true sale may be compromised and the assets may be subject to bankruptcy proceedings.

b. The beneficiary may solely direct the trustee's actions and impose absolute control over the transferred assets.

c. An extrajudicial foreclosure procedure may be included in the agreement, granting an expedited enforcement of the assets.



4

Mexican regulations on economic competition have been evolving to the point of reaching international standards.

Antitrust

In recent years, Mexican regulations on economic competition have been evolving to the point of reaching international standards. This shows that Mexico has a firm commitment to enforcing its competition regulations despite there being no changes in government. In this section, we summarize antitrust regulations in Mexico, as well as the antitrust authorities' most important activities.

The Constitution of Mexico (*Constitución Mexicana de los Estados Unidos Mexicanos*) was approved in 1917, and article 28 of the Constitution establishes that there will be no monopolies of any kind in Mexico, except for certain sectors such as coinage of money, mails, telegraphs and radiotelegraphy, as well as any other sectors necessary to develop an effective rule of law. Article 28 also states that the authorities will punish any acts that go against free competition.

The first competition law was enacted in 1992, amid the negotiations of the North American Free Trade Agreement with Canada and the United States of America. In a new vision of the world that called for fair treatment among the accelerated growth of domestic and foreign investment, Mexico needed to adjust its regulations on economic competition. Through the above law, the Federal Economic Competition Commission was created as an agency incorporated within the Ministry of Economy as the authority in charge of enforcing the legal framework applicable to competition matters.

The original 1992 competition law was amended several times to grant the competition authority more effective enforcement tools and to discourage any economic agent from carrying out any acts that breach competition regulations.

In 2013, a constitutional amendment relating to economic competition came into effect. The Federal Economic Competition Commission ("COFECE," in its Spanish acronym) was separated from the Ministry of Economy and from all other entities of the Mexican Federal Administration. COFECE acquired its own legal personality, as well as its own budget, managerial and decision-making autonomy. The above constitutional amendment also gave rise to a new antitrust agency called the Federal Telecommunications Institute ("IFT," in its Spanish acronym), which has legal competence in antitrust and merger control matters relating specifically to the telecommunications and radio broadcasting sectors, which are of particular importance in Mexico.

To summarize, the legal framework applicable to antitrust matters in Mexico includes the (i) the 2014 Federal Economic Competition Act ("FECA"), which both the COFECE and IFT can enforce in the context of their respective authority (i.e., COFECE reviews all sectors except for telecommunications, which IFT reviews); and (ii) the secondary regulations that COFECE and IFT issue, which must always be consistent with the FECA.

4.1. COFECE

COFECE's main purpose is to guarantee free economic competition in Mexico. To that effect, COFECE prevents, investigates and prosecutes monopolies and monopolistic practices. It also authorizes transactions that exceed certain monetary thresholds, and it analyzes the restrictions that may hinder the markets from operating effectively. COFECE is also in charge of promoting a culture of competition, as well as drafting and issuing—through public authorities and sectoral regulators—laws and public policies that do not limit market competition.

COFECE is made up of the following: Investigating Authority, Technical Secretariat and a Board of Commissioners.

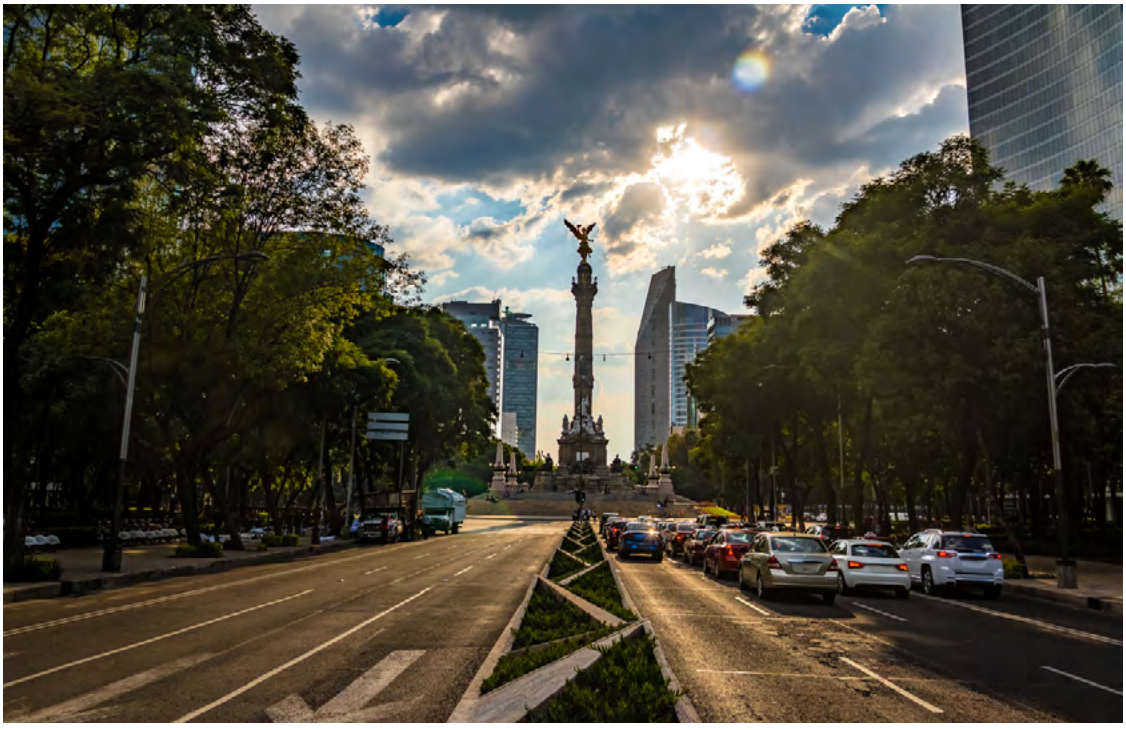
The Investigating Authority oversees antitrust investigations and participates in trial-like procedures as the prosecutor. This authority (i) receives complaints regarding probable monopolistic acts; (ii) investigates the possible violations of the FECA; and (iii) requests public authorities in Mexico and other countries to provide information on possible violations of the FECA.

The Board of Commissioners, which consists of seven commissioners, is the governing body in charge of deciding on cases and resolving matters constitutionally mandated in an independent and autonomous manner, requiring a majority vote. It discusses all merger control authorizations and penalties for carrying out monopolistic practices.

4.2. Monopolistic practices in Mexico

Anticompetitive conducts

FECA recognizes two anticompetitive practices: (i) horizontal monopolistic practices, carried out by two or more economic agents that are competitors; and (ii) relative—and usually vertical—monopolistic practices.
In all cases involving monopolistic practices and unlawful concentrations, COFECE will have to define the relevant market. Usually, COFECE carries out an analysis to determine which products are substitutes for each other in terms of use and prices, and, for competition purposes, piercing the corporate veil by analyzing an economic group's conduct is not uncommon.



Absolute monopolistic practices (cartels)

Absolute monopolistic practices are those related to acts, agreements or arrangements—of any kind—carried out by economic agents who are competitors with each other and that aim to (i) fix, raise, coordinate or manipulate the sale price of goods or services; (ii) collude to not produce, process, distribute, market or acquire, but only a restricted or limited amount of goods; (iii) agree to provide a limited or restricted number, volume or frequency of services; (iii) segment the market; and (iv) arrange or coordinate bids or abstain from participating in bids.

Commonly, the above practices are known as illegal *per se* (meaning they are null), as the COFECE only needs to prove that the agreement or arrangement was executed, even if the agreement or arrangement did not come into effect or did not affect the market. The main consequence of considering those practices null *per se* is that, legally, they cannot produce any effect, and the economic agents and representatives involved can be subject to criminal charges. Those involved may be fined up to 10% of their worldwide income.

A leniency program is available for whistleblowers, granting protection from fines and criminal charges. However, its admissibility depends on different circumstances, such as the accuracy of the information provided, the level of cooperation with COFECE, and whether the whistleblower is the first competitor to denounce the absolute monopolistic practice.

Relative monopolistic practices

Relative monopolistic practices are acts, agreements or procedures carried out by economic agents with substantial market power with the purpose or effect of unduly displacing other economic agents from the market, hindering their access or establishing exclusive advantages in favor of one or more economic agents. Unlike absolute monopolistic practices, these acts, agreements or procedures are not illegal *per se*. A rule of reason assessment should be carried out to determine whether the conduct is unlawful. Under the FECA, an economic agent will not be punished if it is demonstrated that the act, arrangement or procedure creates efficiency gains and has a favorable impact that exceeds the possible anticompetitive effects of the conduct, resulting in the improvement of consumer welfare.

The most common relative monopolistic practices are not carried out by competitors, but by economic agents in a different position in the chain of value (e.g., producer and distributor, distributor and retailer). However, competitors sometimes engage in these conducts, such as in predatory pricing.

The most significant relative monopolistic practices described by the FECA are (i) vertical market division by reason of geography or time; (ii) vertical price restrictions; (iii) tied sales; (iv) refusal to deal; (v) boycotts; (vi) predatory pricing; (vii) cross subsidization; and (viii) discrimination in price, sales or purchasing conditions.

Unlawful concentrations and execution of non-authorized concentrations

All concentrations that have, as a purpose or an effect, the obstruction, diminishment, harm or impediment of free market access and economic competition are considered unlawful.

If a transaction is not authorized by COFECE or IFT when the thresholds are met, the parties will be subject to a fine, even if the transaction is not considered an unlawful concentration. In recent years, COFECE has significantly increased the enforcement of the FECA relating to concentrations.

4.3. Merger control procedures

A concentration is a merger, acquisition of control, or any other act through which companies, associations, stock, partnership interest, trusts or assets are consolidated.

Concentrations are subject to a mandatory review—usually known simply as merger control—if the transaction exceeds the thresholds provided by the FECA. The thresholds are met if the transaction (i) exceeds a value of approximately MXN $1,731,960,000 (in crossborder transactions, that value must be

Concentrations are subject to a mandatory review if the transaction exceeds the certain thresholds.

understood as the part corresponding to Mexico); (ii) involves acquiring more than 35% of the shares of the assets of an economic agent whose annual sales originating in Mexico are worth approximately MXN $1,731,960,000; or (iii) the value of the capital stock or the assets exceeds MXN $808,248,000 and the joint or separate value of the sales and assets originating in Mexico of the participating economic agents exceeds approximately MXN $4,618,560,000. These concentrations must be notified before they are closed or executed.

If the transaction does not meet the thresholds, the economic agents may notify the concentration voluntarily.

Concentrations approved by COFECE cannot be investigated, unless the approval resolution was made based on false information or was subject to ulterior conditions that were not fulfilled in the legal timeframe provided. However, concentrations not requiring prior notice to the commission cannot be investigated if one year has passed since they were executed.

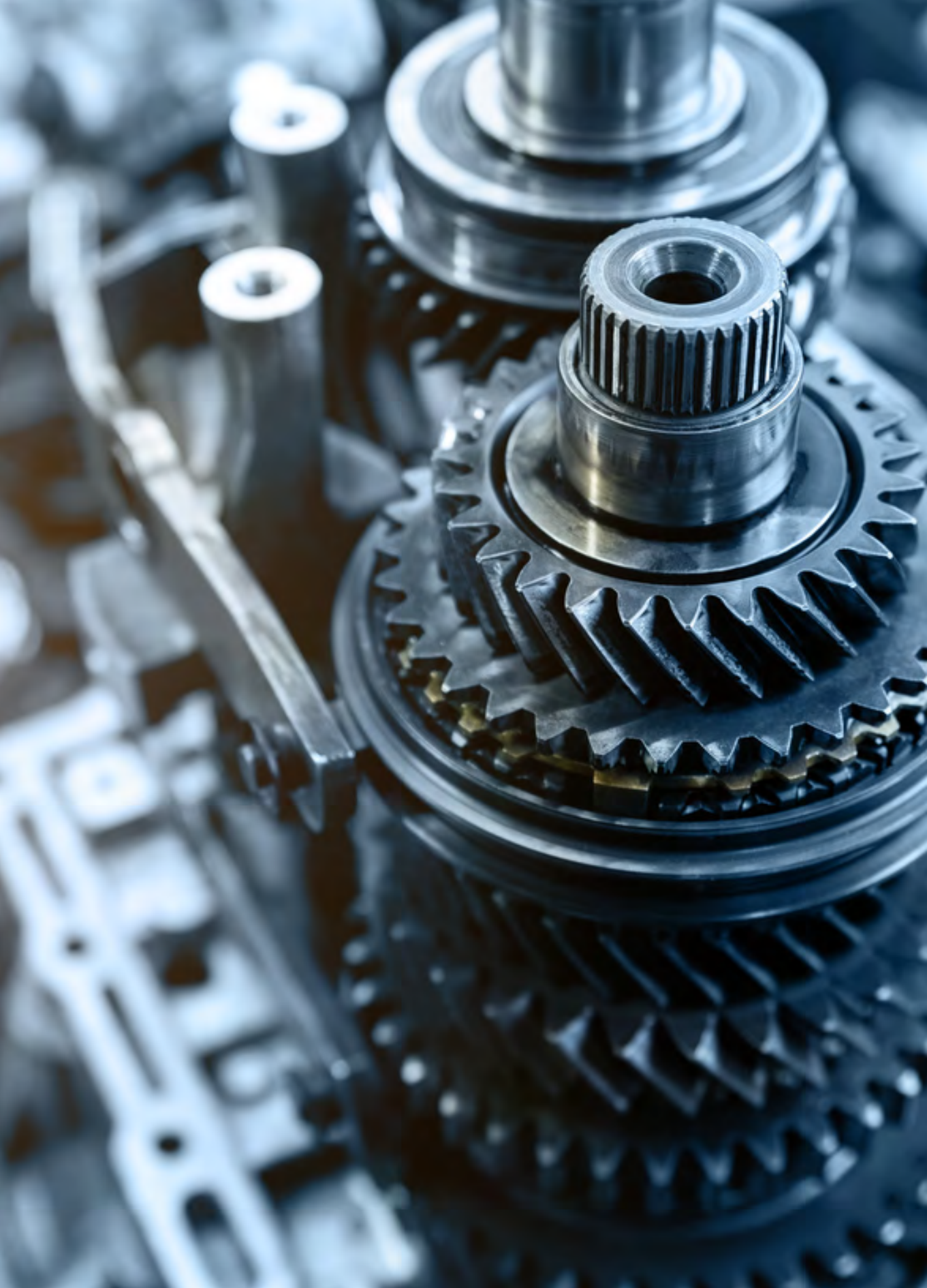
In this procedure, the notifying parties must file the merger control notice to COFECE through the Technical Secretariat. In most cases, COFECE requests additional information (e.g., financial statements and public deeds) and market information. As in other jurisdictions, to reduce competition risks and get the approval of COFECE, in complex cases involving a possible hindering of the competition process due to the concentration, the notifying parties may propose certain remedies or reduce the extent of the transaction. The concentrations can either be authorized (if certain conditions are met), or denied (which is rare).

Although anticipating the time a merger control will last is difficult, a transaction or merger involving no competitors should take approximately two months.

4.4. Enforcement measures and sanctions

Under the FECA, the Board of Commissioners can ask the Attorney General for criminal charges to be brought against the economic agents that carried out absolute monopolistic practices.

If the economic agent carried out monopolistic practices, after a trial-like procedure (where the Investigating Authority acts as prosecutor, the Technical Secretariat issues all the procedural orders, and the economic agent can exercise its right to be heard), the Board of Commissioners may impose penalties, and COFECE may order remedies for the negative effects of the unlawful conduct. Employees, attorneys-in-fact, representatives and directors can also be responsible for violating the FECA if they effectively participated in the illegal practice, with the corresponding sanctions being imposed on them. In some cases, the economic agents that violate the FECA can be banned from contracting with the government, especially in cases where the monopolistic practice harmed the administration. In all cases, the final decisions that COFECE issues can be challenged in highly specialized federal courts in a constitutional trial (*juicio de amparo indirecto*).



5

Intellectual property

The term intellectual property covers industrial property and copyright.

In Mexico, the term intellectual property covers:

i. industrial property, including patents for inventions, trademarks, industrial designs and geographical indications; and

ii. copyright, including literary works (e.g., novels, poems and plays), films, music and artistic works (e.g., drawings, paintings, photographs and sculptures).

5.1. Legal Framework

- Constitution of Mexico
- Industrial Property Act
- Federal Copyright Act
- Federal Plant Varieties Act
- National Seed Inspection and Certification Service

5.2. Industrial Property

The Mexican Institute of Industrial Property ("IMPI," in its Spanish acronym), the administrative authority for these matters, (i) grants and denies registrations, (ii) investigates possible administrative industrial property infractions, and (iii) acts as arbitrator in industrial property-related disputes.

In Mexico, the IMPI protects three legal types of industrial property:

i. Patents: products or processes considered novel on an international level.

ii. Utility models: modifications to improve previously existing inventions, tools and machinery.

iii. Industrial designs: industrial designs, trademarks, commercial advertisements, commercial names and origin denominations.

The protection granted to industrial property aims to prevent the non-authorized use of these rights, which are characterized by three principles:

i. Exclusivity: only the owner is authorized to commercially exploit the protected right.

ii. Territoriality: rights granted in national territory are independent of rights granted in other countries.

iii. Temporality: duration established to exploit protected rights commercially.

We highlight below the periods for which the above rights are protected:

Industrial property right	Protection period granted	Renewable	Must Register?
Patent	20 years	No	Yes
Utility models	15 years	No	Yes
Industrial designs	5 years	Yes	More protection if you do
Trademarks	10 years	Yes	Yes
Commercial advertisements	10 years	Yes	Yes
Commercial names	10 years	Yes	No

Industrial property has become more developed in recent years. Becoming regulated on an international level, it is gaining more trust relating to national and foreign investment.

In 2018, the definition of trademark changed. It now includes any sign that is perceptible by the senses and susceptible to being represented, such as smells and sounds. A new legal type of industrial property has also been added, known as a "certification mark," which has certain qualities that distinguish products and services.

5.3. Trade Secrets

The Industrial Property Act defines an industrial secret as confidential information relating to an industrial or commercial application that (i) has a physical or legal entity, and (ii) involves obtaining or maintaining a competitive or economic advantage over third parties. An industrial secret can be transferred and licensed to the public. Its confidential information must relate to:

i. the nature, characteristics or purposes of the products;

ii. the production methods or processes; or

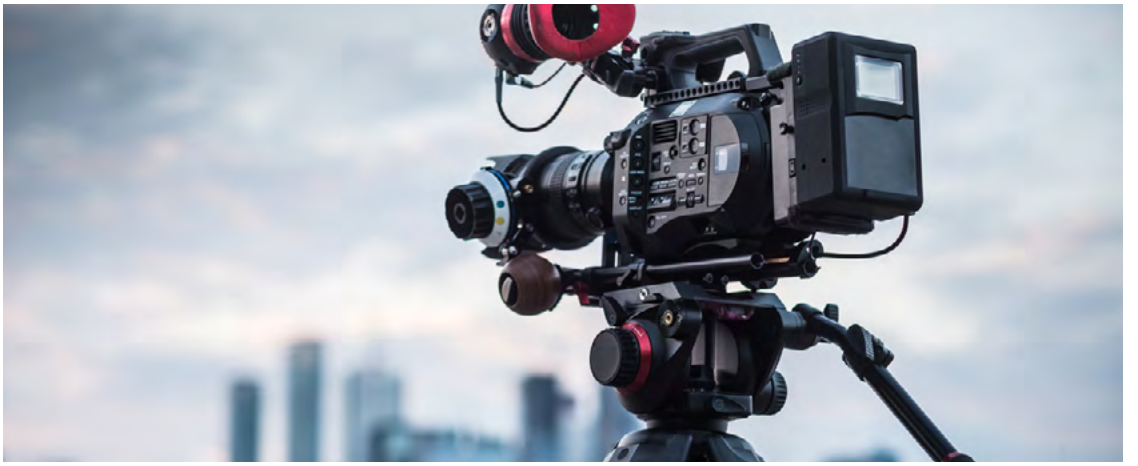
iii. how the products are distributed or commercialized, or how services are provided.

5.4. Copyright

The National Copyright Institute (*Instituto Nacional de Derechos de Autor)*, the administrative authority for copyright matters, (i) protects copyrights, (ii) promotes the creation of artistic and literary pieces, (iii) coordinates the Copyright Public Registry; and (iv) promotes international cooperation.

The Federal Copyright Act grants copyright protection to the following works: literary; musical, with or without lyrics; dramatic; dance; pictorial or drawing; sculptural and plastic; caricature and cartoon; architectural; cinematographic and audiovisual; radio and television programs; computer programs; photographic programs; works of applied art, including graphic or textile design; and compilation, which is integrated by collections of works, such as encyclopedias, anthologies, and works or other elements, such as databases, provided these collections, by their selection or the arrangement of their content or materials, are an intellectual creation.

A special type of protection, called reservation of rights, can be given to titles of publications, characters appearing in works, names of individuals or groups carrying out artistic activities, names, and the original operation characteristics of advertising promotions. The copyright holder can prevent others from reproducing the work without consent or a license.



5.5. Rights covered by copyright

The Federal Copyright Act establishes that the author of a literary or artistic work has exclusive personal and economic rights to that work. Personal rights include the moral and economic rights, as explained below:

Moral Rights

Moral rights protect the link between the author and the work. Under the Federal Copyright Act, authors are the only holders of perpetual moral rights to the works they create. The moral right is considered linked to the author and is inalienable, imprescriptible, irrevocable and unattachable.

Moral rights include the:

i. right to disclosure, which means holders of moral rights may determine whether their works are to be disclosed and in what form, or whether they keep it unpublished;

ii. right of paternity, which is the right to demand to be recognized as author of the work, and to decide if it will be published anonymously or by using a pseudonym;

iii. right of integrity;

iv. right of withdrawal; and

v. right of repudiation.

Economic Rights

Under the Federal Copyright Act, economic rights grant holders the right to exploit their works exclusively, or to authorize others to exploit them. With moral rights, which do not have a personal character, authors can either exploit them or cede them to a third party to exploit the work in any form provided by law.

Economic rights include:

i. reproduction;

ii. public communication;

iii. public broadcasting;

iv. distribution to the public; and

v. disclosure.

Related Rights

Related rights are rights related to copyright. The Federal Copyright Act states clearly that the protection granted to holders of related rights will not affect the copyright protection. Holders of related rights and, in turn, the objects protected, are:

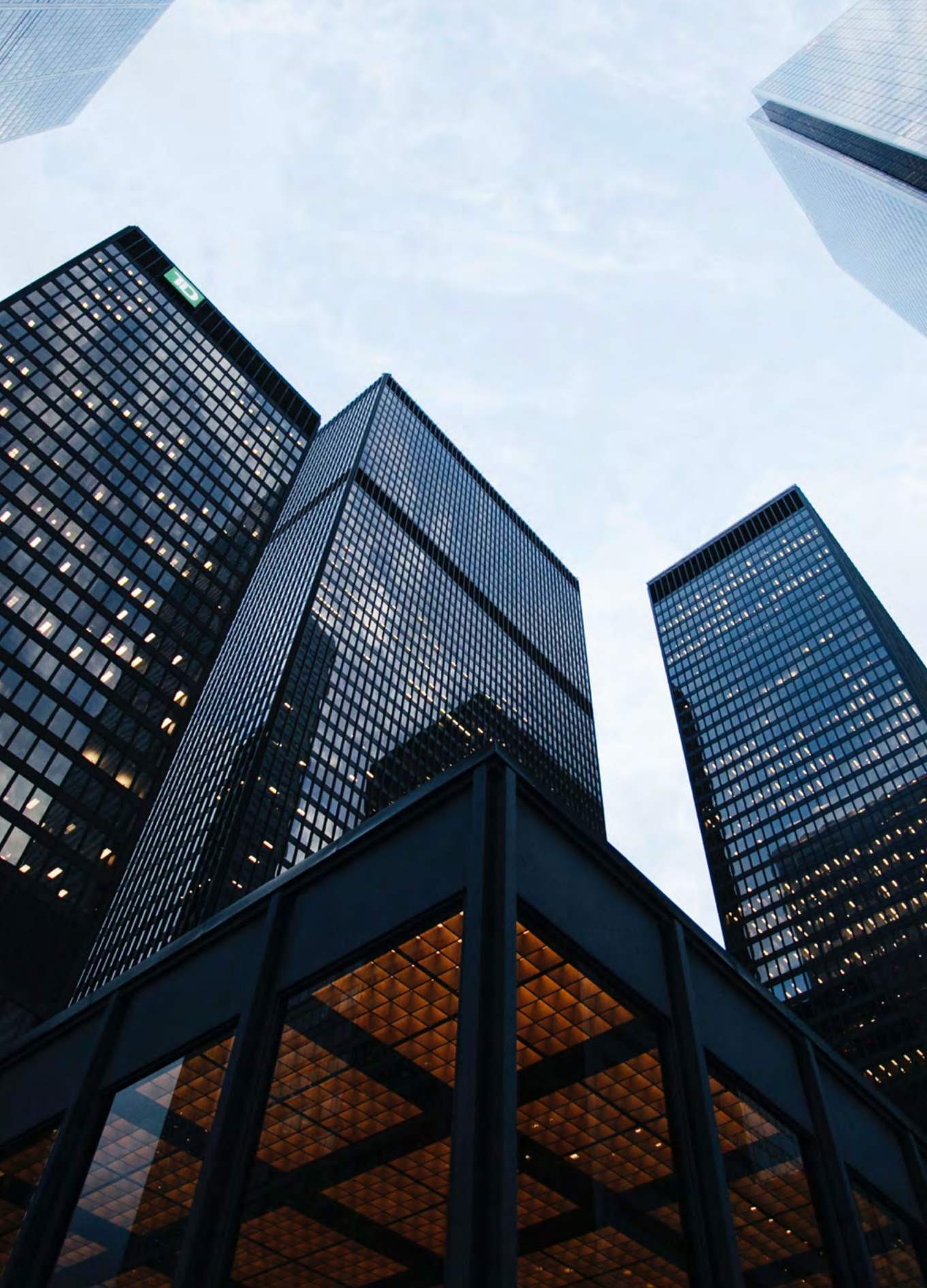
i. artists and performers;

ii. book publishers;

iii. phonogram producers;

iv. videogram producers; and

v. broadcasting organizations.



6 Real Estate

6.1. Overview

The Mexican real estate market is growing, with the development of new mixed-use residential complexes that include hospital and health facilities, commercial spaces and offices. These complexes centralize the population, reducing distances between individuals and their work and amenities, as well as generating higher revenues for developers and more opportunities. The hospitality market has also grown considerably and is expected to maintain its upward trajectory because of the growth in tourism in recent years.

Legislation and legal regimes applicable to real estate transactions vary depending on location.

States are responsible for regulating real estate property and transactions involving real estate, so legislation and legal regimes applicable to real estate transactions vary depending on location. Legal titles to and charges on real estate in Mexico are registered with and supported by a public land registration system (*Registro de la Propiedad, or land registry*), which also varies depending on location.

In land rights agreements, specific provisions may apply, depending on the land rights; i.e., certain land rights agreements relating to oil and gas projects must comply with the Hydrocarbons Act (*Ley de Hidrocarburos*).

The main participants in the real estate market include pension funds and investment funds.

The Mexican real estate market has developed as a result of the different structures for acquiring real estate, taking advantage of the most tax-efficient options. The main participants in the real estate market include pension funds (national and international) and investment funds (national, international, public and private), which have become very popular due to their high profitability and low risk.

Anyone can acquire title to real estate in Mexico, either directly or through investment vehicles. There are two types of property: private property and communal (*ejido*) property, which has a higher risk that can be mitigated with further due diligence.

6.2. Types of property investment

Real estate transactions can be structured as (i) asset deals (directly acquiring the real estate); (ii) share deals (acquiring a vehicle or a company that owns the real estate); or (iii) the beneficiary rights of a trust to which the real estate has been contributed. The choice is usually based on the advantages and disadvantages related to (i) tax impact (analyzed case by case, depending on numerous factors); (ii) due diligence effort (more relevant in certain types of real estate development, such as real estate for retail); and (iii) risk assumption (purchaser assumes risks related only to the property, or to the property and the vehicle). This section focuses on asset deals relating to privately owned real estate.

6.3. Acquiring real estate

Legal titles to and liens over real estate are filed and registered with the state public registry where the real estate is located (i.e., *Registro Público de la Propiedad*). Each state has its own public registry or land registry. The registries record property titles and real property rights (*derechos reales*). The land registries keep record of property titles and rights *in rem*.

Land registries' most important function is the protection they give, which means third parties acting in good faith (i.e., purchasers) can rely on the information they provide. When *bona fide* third parties acquire ownership of real estate or any other right in rem for consideration and record their acquisition with the land registry, this purchase cannot be challenged based on circumstances that are not recorded in the land registry. Access to land registries is public.

In specific transactions where the legal title of the real estate is not clear, or it was subject to an agrarian regime, purchasers usually take out title insurance, which can be taken out directly in Mexico. In certain cases, some contingences and third-party rights are not recorded in public registries, including (i) lease agreements, (ii) administrative sanctions resulting from soil contamination, (iii) environmental hazards, and (iv) property taxes. These contingencies, along with other issues typically discovered during the due diligence process, can be mitigated in the asset purchase agreement.

6.4. Real estate transactions

Several aspects need to be considered when carrying out real estate transactions. These aspects can vary depending on the transaction.

Condominium

Properties forming part of a real estate complex may be incorporated as a condominium (*condominio*) under the state law for condominiums (e.g., in Mexico City, the applicable law for condominiums is the *Ley de Propiedad en Condominio de Inmuebles para el Distrito Federal*). A condominium has common areas or facilities alongside private properties that may be owned by several owners.

Zoning classification

The local authorities determine and approve the zoning classification and the activities that can be carried out in each property. The land registry does not confirm the real estate zoning classification or whether the property's boundaries, surface and physical characteristics comply with urban planning. This requires a further analysis to determine the project's feasibility.

Environmental and social aspects

Real estate may be subject to contingencies related to hazardous residues, and environmental, social or archaeological legislation. The due diligence process should pay special attention to these regulations.

6.5. Requirements for real estate transfers

Although state legislation applies to real estate transactions and different requirements may apply, there are also general rules.

Preparatory documents

Preparatory documents, including letters of intent, can be executed and are common under Mexican law. Parties can include binding clauses, confidentiality provisions or agreements on

exclusivity periods. Promissory agreements can be executed and are enforceable between the parties. These clauses are typically executed when the sale and purchase deed cannot be executed due to a third party or the lack of a formal requisite.

To transfer real estate of a certain value, a public deed must be signed before a notary public, and it must be registered with the corresponding land registry, making it enforceable against third parties.

Sale and purchase deed

To transfer real estate of a certain value, a public deed must be signed before a notary public, and it must be registered with the corresponding land registry, making it enforceable against third parties.

In real estate transactions, companies need to be represented by the company's legal representative with a power of attorney. The power of attorney must be granted before a notary and must grant sufficient legal capacity to sign the sale and purchase deed. When granted abroad, it must be legalized by a notary public and apostilled according to the Hague Convention or notarized by a Mexican consul. Also, if granted in a country that is a party to the Washington protocol, it must comply with its provisions.

6.6. Rights to real estate

Mexican law also provides the following rights *in rem*: (i) use and occupancy, (ii) usufruct, and (iii) easements. Anyone with legal capacity may hold and exercise rights *in rem*.

The following are the most common rights:

Lease agreement

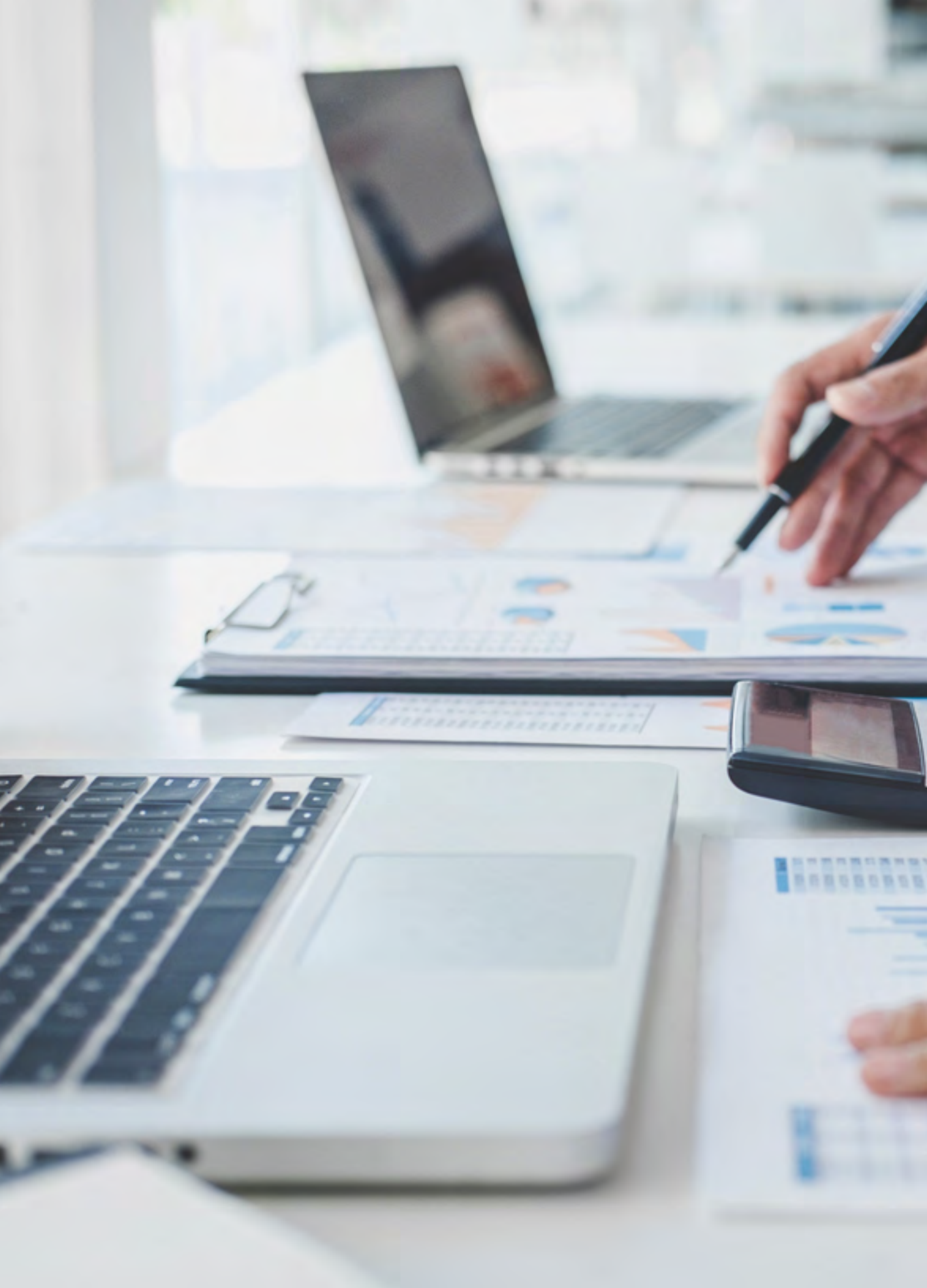
Under a lease agreement, the lessor grants the lessee the right to use and occupy a real estate property for a payment, which can be fixed or variable. Lease agreements are usually subject to specific regulations, depending on its purpose (i.e., residential lease agreements have different terms than those applicable to commercial lease agreements).

Easement agreement

An easement agreement grants a right *in rem* (*derecho real)* over a servient estate (*predio sirviente*) in favor of a dominant estate (*predio dominante*). This right will follow the dominant estate and will be recorded as a lien (*gravamen*) over the servient estate.

Usufruct agreement

Under a usufruct agreement, the usufructuary will have the right to use the real estate and all the products (*frutos*) it generates during a certain period. The usufruct is recorded as a lien (*gravamen*) on real estate.



7 Tax

Mexican tax residents are taxable on their worldwide income. Foreign residents and PEs are taxed on Mexican-source income and on the income derived from carrying out business in the country.

7.1. Overview of the Mexican tax system

Mexican tax residents are taxable on their worldwide income. Foreign residents and PEs are taxed on Mexican-source income and on the income derived from carrying out business in the country.

Generally, individuals are considered tax residents in Mexico if their permanent residence is located in Mexico (in the event an individual has a permanent residence in other countries, tie-breaker rules will apply). If the individual has two residences (one in Mexico and the other in another country), the individual will be considered resident in the place where his or her center of vital interests is located. Corporations are considered tax residents in Mexico if their main place of management is located in Mexico.

The Mexican legal tax framework includes:

i. the Federal Income Act, approved yearly, establishing the federal taxes, levies, duties, assessments, fees and other charges imposed by the federal government each year;

ii. the Federal Tax Code and its regulations;

iii. the Income Tax Act and its regulations;

iv. the Value-added Tax Act and its regulations;

v. international treaties, such as DTTs, and comprehensive agreements for the exchange of tax information;

vi. miscellaneous tax resolutions/Omnibus Tax Bill;

vii. non-binding principles;

viii. normative guidelines;

ix. frequently asked questions;

x. rulings; and

xi. local tax laws and regulations.

The tax authorities must assess and collect taxes, review returns or impose additional tax liabilities within five years (from the date the tax return is submitted). In certain cases, this period is 10 years. The tax authorities retain the right to investigate tax felonies even beyond these periods. Taxpayers may request tax refunds within five years.

7.2. Tax authorities

SAT is a regulatory agency of the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*), and it is in charge of controlling the Mexican tax and customs system at the federal level. However, there are coordination agreements in place between federal and state authorities, allowing states to collect certain federal taxes under specific conditions (such as income tax). There are also local tax administration agencies and offices at the state level. The PRODECON is a decentralized Mexican organization that acts as a tax ombudsman for taxpayers. It provides advice, helps reconcile conflicting rule interpretations and issues recommendations to the local tax authorities.

The tax authorities have recently focused tax inspections on (i) transactions with nonresidents (usually payments abroad), (ii) deductibility of service expenses, (iii) transfer of net operating losses, (iv) issuances of electronic invoices related to nonexistent transactions, (v) transfer pricing issues, and (vi) customs duties.

7.3. Income tax

Income tax ("ISR," in its Spanish acronym) is levied on income a taxpayer receives in cash, kind, credit or services. For 2022, the ISR applicable to individuals is based on a progressive rate that varies depending on the nature of the taxable income, and it may reach up to 35%. Corporations are subject to an ISR rate of 30%.

To determine an individual's taxable income, all profits and income the taxpayer receives must be considered, minus expenses and permitted deductions (which depend on the activities that generated the income). For corporations, the taxable income is determined based on the total taxable revenue, minus authorized deductions and mandatory employee profit-sharing ("PTU," in its Spanish acronym), which is explained below.

Foreign tax residents are subject to ISR when obtaining Mexican-source income (e.g., dividends, interest, royalties, and capital gains), and it is mainly paid through withholdings applied by the Mexican tax residents involved in the transactions. The applicable rate varies from 0% to 40%, depending on the type of income, transaction and beneficiary. However, DTTs may provide relief by establishing lower rates and exemptions.

PEs

Non-tax resident companies are subject to income tax at 30% on their net income if they have a PE in Mexico. Generally, a PE is a place of business where an enterprise's activities are fully or partially carried out (e.g., offices, branches and mining sites). If a non-tax resident company does not have a PE in Mexico, income from Mexican sources is taxed, although the rate varies. The 25% rate is generally applied on a gross basis and withheld by the payer if the payer is either a Mexican tax resident or a foreign resident with a PE in Mexico.

Payments to related parties subject to preferential tax regimes

Unless a tax information exchange agreement is in force, any payments to related parties who are residents of a tax haven or a jurisdiction with a preferential tax regime are subject to income tax at a 40% rate.

Also, the deduction of the expense may be rejected if the payment does not relate to the "trade or business" of the beneficial owner resident in a preferential tax regime.

Related parties

One party is generally considered related to another when the former participates in the capital, administration or control of the latter. Similarly, two parties are considered related when they are controlled, owned or administered totally or partially by the same person or group of persons.

The Income Tax Act also provides the rules applicable to transactions among related parties, and applicable methods to comply with transfer pricing principles, including the arm's length principle.

Mexican taxpayers involved in transactions with domestic and foreign related parties are required to carry out these transactions using prices

and consideration that would have been used by unrelated parties in comparable transactions. Transfer pricing documentation and reporting requirements are applicable to all transactions among related parties. The reporting must be supported by transfer pricing studies carried out using the methodologies permitted under the applicable laws.

Mexico recognizes transfer pricing methods, which are consistent with the transfer pricing guidelines of the OECD.

Mexico recognizes transfer pricing methods (i.e., comparable uncontrolled price, resale price, cost-plus, and profit split), which are consistent with the transfer pricing guidelines of the Organization for Economic Co-operation and Development (OECD).

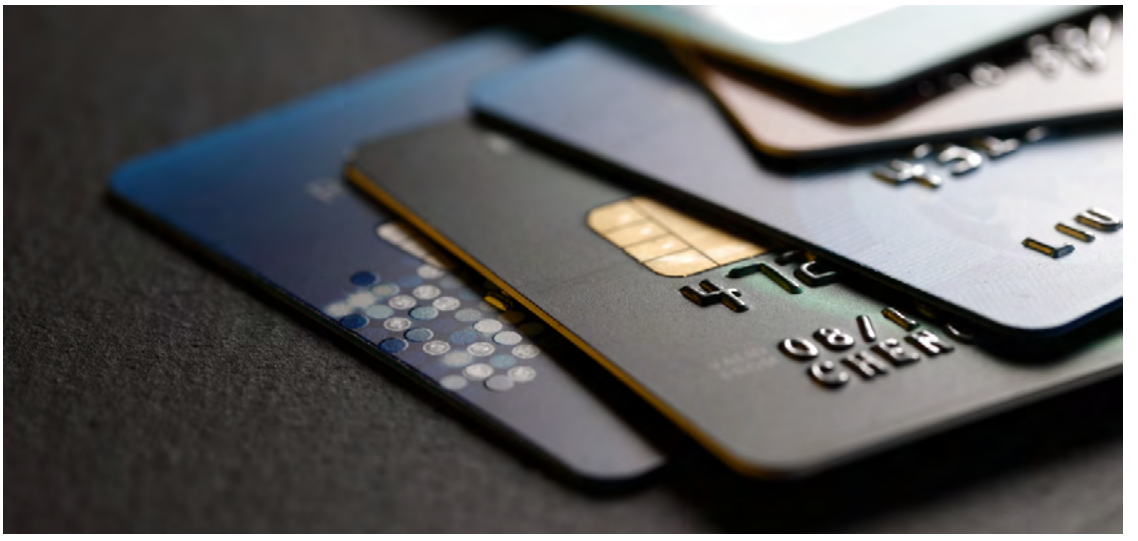
7.4. Taxation of dividends

Resident corporations are not subject to tax on dividends received from other Mexican residents. Dividends received from foreign corporations are subject to ISR; however, withholding taxes and the corporate income tax paid abroad may be credited up to a second corporate level.

Dividends distributed by Mexican corporations are not subject to ISR at the distributing level if the distribution is from previously taxed earnings and if the distributing corporation has sufficient accumulation in its "net after-tax profit account" ("CUFIN," in its Spanish acronym) to cover the dividend. If the dividend is in excess of the CUFIN, the dividend is also taxed at the distributing company level at a 30% rate on a grossed-up basis.

7.5. Value added tax (VAT)

Value-added tax ("VAT") is an indirect tax, which is levied on the value added at each stage of production. This is achieved through a tax credit, which consists of subtracting, from the payable tax, the tax that was transferred in the previous stage. Consequently, VAT is paid only on the differential resulting from the crediting between one stage and another.



Under the Mexican VAT Act, the following activities are taxed when carried out in Mexico:

- Transfer of goods
- Provision of independent services
- Granting the temporary use or enjoyment of assets
- Importation of goods or services

The standard VAT rate is 16%.

The standard VAT rate is 16%, with certain activities subject to a zero VAT rate. The VAT Act also exempts certain activities and transactions from VAT.

Under an executive branch decree issued in 2019, some of the VAT taxable activities carried out on the northern and southern borders of the country may be taxed at a reduced VAT rate of 8%. This incentive is not applicable to the sale of intangibles or real estate.

7.6. Social security contributions

Social security contributions include payments to the Mexican Institute of Social Security ("IMSS," in its Spanish acronym), and to the National Housing Fund for Employees Institute ("INFONAVIT," in its Spanish acronym).

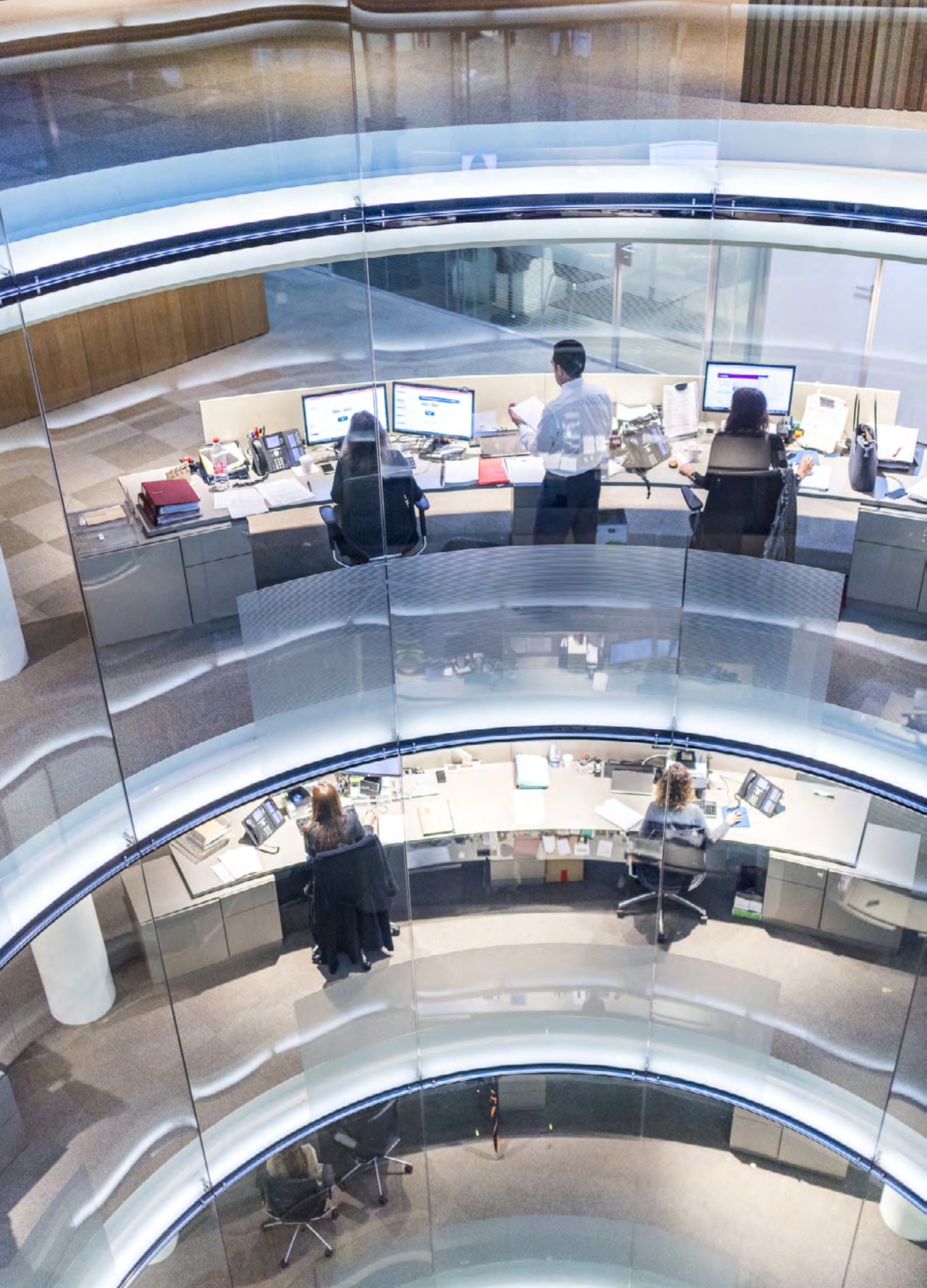
Social security contributions depend on several factors, such as the number of employees, the employer's risk premium and the services the employees provide, ranging from 25% to 35% of payroll costs.

7.7. Import taxes

In addition to the applicable VAT and any customs fees that may apply, individuals or companies importing goods into Mexico must pay import taxes. The tax rate applicable to the imported goods is determined based on the tariff classification number provided in the General Import and Export Taxes Act. Import taxes do not always apply. Under the Customs Act, taxes and custom duties are determined based on the purpose of the transaction. In principle, import taxes only apply to goods imported under the definitive import regime. Several products are exempt from import taxes.

7.8. Excise taxes

Mexico has a set of excise duties, mainly under the Special Production and Services Tax Act. Mexico's excise duties are similar in nature to VAT, as they are paid by the end user and apply only to certain products. Products subject to excise duties include gasoline, diesel, alcoholic beverages, cigarettes, tobacco products, energy drinks and high-calorie foods and drinks. Services subject to excise duties include gambling and raffles. The rates vary in each case.



8 Employment

8.1. Overview

The Mexican Federal Labor Act ("FLA") and the Social Security Act ("SSA") are the two main laws governing employment in Mexico. The FLA establishes the main rules, general terms and conditions of employment, causes to terminate employment relationships, collective matters such as right to unionize and collective bargaining, and employment procedure.

The SSA provides rules and provisions on the social security regimes, social security dues, and the terms and conditions of all benefits granted by the IMSS.

The provisions in both the Federal Labor Act and the Social Security Act are public policy.

The provisions in both the FLA and in the SSA are public policy; therefore, parties cannot contract out of these statutes. Any waiver by employees of any of the rights granted by these laws will be void.

8.2. Employment relationship

Employment relationship

- According to the FLA, an employee is an individual who provides a personal and subordinate service to another individual or entity in exchange for a salary.
- An individual employment agreement contains all employment conditions.

Employment agreement

- Under article 25 of the FLA, all employment agreements must contain:

  i. the parties' names;

  ii. the parties' nationality, gender, address and tax identification number;

  iii. a description of the services or activities the employee will carry out;

  iv. the term of the employment relationship and work schedule;

  v. the salary and terms of payment of salary;

  vi. the obligation to train employees; and

  vii. any other employment conditions, such as benefits, days off,

beneficiaries in case of decease of the employee, and any other agreements the parties agree on.

Types of employment agreements

- Employment relationships can be agreed for (i) an indefinite term; (ii) a specific task; (iii) a fixed- term; (iv) a seasonal job; or (v) an indefinite term with a trial period or initial training clause.
- Generally, employment relationships in Mexico are continuous for cause. Exceptionally, employment agreements may be for a fixed term when required by the nature of the job or to substitute an employee temporarily.

Salary and minimum wage

- Under the FLA, all employees are entitled to at least the minimum wage published annually by the National Minimum Wage Commission (Comisión Nacional de Salarios Mínimos).
- There are two types of minimum wage: the general minimum wage and the professional minimum wage. To date, the general minimum wage is MXN $172.87 per workday. The professional minimum wage applies to specific jobs (e.g., waiters, truck drivers and housekeepers).
- Since January 1, 2022, a specific minimum wage applies for services provided in the "North Border Free Zone," which includes certain states. To date, the minimum wage in the North Border Free Zone is MXN $260.37 per workday.
- There are three types of salaries calculated in all employment relationships: (i) base salary, (ii) integrated salary, and (iii) contribution-basis salary (for SSA purposes):
  - The base salary is the cash amount agreed for the services.
  - The integrated salary is calculated for severance purposes and includes a daily rate of benefits granted to employees for services (when the employment is terminated).
  - The contribution-basis salary is used to calculate the employer-employees social security contributions payable to the IMSS.

Profit sharing

Profit sharing is a specific concept under Mexican employment law. Currently, all employers must pay their employees 10% of their taxable income under the payment mechanisms established in the FLA and in the Mexican Income Tax Act.

The exact amount to be paid to employees as profit sharing is determined in the annual corporate income tax return, which must be filed by March 31 of each year. There are specific rules to determine the amount each employee is entitled to for profit sharing:

i. The profit sharing must be paid within 60 days from the date the employer's income tax return is filed.

ii. Employers are not obligated to pay profit sharing to employees during the first year of operation (from the date the company is incorporated).

iii. The company's CEO, general manager or director (i.e., the highest hierarchical position in the company) is not entitled to profit sharing.

iv. Temporary employees are entitled to profit sharing if they were employed for at least 60 days in the corresponding tax year.

v. Employees are entitled to a maximum of (i) three months' salary; or (ii) the average received for profit sharing during the last three years. The employee will receive the highest amount of these two rules.

Statutory benefits

Employees have the right to receive the following statutory benefits: (i) 6 vacation days after 1 year of service (which increases by 3 days yearly, up to 12 days, and after the fourth year of service, 2

additional days every five years); (ii) 25% of vacation days, as a vacation premium (*prima vacacional*), based on the salary paid during their vacation days; and (iii) 15 days' base salary as a year-end bonus (*aguinaldo*).

Some employers give additional benefits, such as extra vacation days, meal coupons, private medical insurance, life insurance and savings funds. Although these benefits are not mandatory under the FLA, giving employees additional benefits is valid and even advisable for management positions.

Shift work

There are three types of shifts: day shift (between 6:00 a.m. and 8:00 p.m.), night shift (from 8:00 p.m. to 6:00 a.m.), and mixed shift.

The mixed shift includes periods of the day and the night shifts, but if it includes three and a half hours of the night shift, it is considered a night shift.

The maximum duration of the day shift is eight hours, seven hours for the night shift, and seven and a half hours for the mixed shift.

The working shift may be extended for extraordinary circumstances, provided it does not exceed three hours a day or three times a week.

Overtime hours (hours exceeding the legal maximums stated here) must be paid at an additional 100% of the salary for the working day hours. If overtime exceeds 9 hours a week, the employer must pay the excess time at an additional 100% of the salary corresponding to the working day.

Maternity and paternity leave

Irrespective of the better conditions that employers may provide, under the FLA and SSA, employers must give statutory maternity and paternity leave. During pregnancy, women are entitled to a six-week rest period before giving birth (pre-birth). They are also entitled to a six-week rest period after the birth (post-birth).

With authorization from an IMSS physician, up to four of the pre-birth six weeks may be transferred to be used jointly with the post-birth period. With an adoption, working mothers will have the right to a six-week rest period after receiving the infant. Under the FLA and the SSA, working mothers receive full salary during maternity leave.

Regarding paternity leave, men have the right to five rest days with full salary for a birth or adoption.

Contracting foreign employees

At least 90% of an employer's workforce must be Mexican nationals. This provision does not apply to directors, administrators or general managers.

If an employer is not able to recruit a Mexican employee with a specific technical skill to perform a specialized job, foreign employees may be hired temporarily, but they must not exceed 10% of the employees with that specialty. In this case, the employer and the foreign employees must train Mexican employees in the specialty.

Under immigration law, to be able to extend and sponsor job offers, and to enter into employment agreements with foreign employees, employers must obtain a "Registration of Employer" document (*Constancia de Inscripción de Empleador*) from the National Institute of Migration (*Instituto Nacional de Migración*).

The Registration of Employer document must be renewed annually according to applicable laws. All employees must obtain an employment visa to be able to work in Mexico. This depends on several factors, including (i) the legislation governing their employment relationship (being national or foreign), and (ii) the length of stay in the country. Foreign employees must also consider the tax provisions applicable to foreign employees.

Termination of employment

Employment may be terminated due to (i) mutual consent of the parties, (ii) employee's voluntary resignation, (iii) employee's death, or (iv) employee's physical or mental incapacity.

From the employer's perspective, employment relationships are not "at will." The principle of stability at work governs employment relationships. Employers have to justify the termination of an employment relationship based on one of the termination causes established in the FLA. In other words, employment is "for cause," given that employers may only dismiss an employee, without any liability, if one of the specific causes under the FLA applies to the employee (e.g., dishonesty, acts of violence, sexual harassment, disobedience and unjustified absences).

If there is no just cause for termination, or cause is not proven in a labor conflict, the employee will have the right to (i) 3 months' integrated salary, (ii) 20 days' integrated salary per year of service, (iii) seniority premium, (iv) accrued and unpaid benefits, and (v) one year of back salaries since the dismissal date (in litigation situations).

Subcontracting personnel

On April 23, 2021, the Official Gazette of the Federation published an amendment to the FLA and related legislation regarding subcontracted employees (the "Amendment").

The Amendment prohibits the subcontracting of employees, which is defined as "when an individual or entity provides or makes available its own employees for the benefit of another."

The prohibition of subcontracting of employees does not include the subcontracting of specialized services and works that are not part of the contracting party's core business or primary economic activity. These specialized works or services may be subcontracted within the same business group (insourcing).

Individuals or entities that provide, or want to provide, subcontracted services must register with the Ministry of Labor and Social Welfare (Secretaría del Trabajo y Previsión Social, or "STPS," in its Spanish acronym). Registration should be granted once it has been demonstrated that the contractor is up to date and in compliance with its tax and social security obligations. An online public registry of registered contractors will be set up. The registration will be valid for 3 years.

The Amendment imposes joint and several liability between the contracting party and the provider of the authorized subcontracted services.

Also, fines may be imposed ranging from 2,000 and 50,000 times the Unit of Measurement and Update (*Unidad de Medida y Actualización*, or "UMA," in its Spanish acronym) on (i) parties that illegally subcontract personnel, (ii) parties that provide subcontracting services without being registered with the STPS, and (iii) parties that benefit from the prohibited subcontracting.

For income tax and VAT purposes, payments made for "authorized" subcontracting of employees will be deductible (for income tax purposes) and accredited (for VAT purposes). This concerns payments made for specialized work or services that are not included in the contracting party's main business or economic activity.

8.3. Social security

Mandatory social security regime

Under the SSA, all employees, including temporary and fixed-term employees, are entitled to social security benefits.

All employees are entitled to social security benefits.

The social security system includes the following:

i. Occupational risks and accidents

ii. Occupational illnesses, general illnesses and maternity leave

iii. Disability and life insurance

iv. Retirement and pension plans

v. Daycare and social benefits

All employees registered in the social security system are entitled to receive the above social security benefits.

Under the SSA, employers must (i) register all employees with the IMSS, (ii) calculate employer- employees' social security contributions, (iii) pay their social security contributions to the IMSS, (iv) withhold employees' portion of social security contributions from their salaries, and (v) pay the IMSS, on the employees' behalf, the social security contributions withheld from their salaries.

Joint liability for payment of contributions

As all employers must calculate, withhold and pay employees' social security contributions, they are jointly and severally liable for submitting the payment of these social security contributions correctly and on time.

From a tax perspective, employers are obliged to withhold personal income tax ("PIT") from employees' salaries. Therefore, employers are also jointly and severally liable for submitting the payment of employees' PIT correctly and on time.

8.4. Employment disputes

The Federal and Local Board of Conciliation and Arbitration ("Labor Boards") decide on employment disputes. Local Labor Boards are tripartite bodies integrated with federal and local executive branches.

Labor Boards decide on all individual and collective disputes arising from employment relationships between employers and employees, between employers and unions, and between unions.

Since a constitutional amendment dated February 24, 2017, and an additional amendment to the FLA, dated May 1, 2019, employment disputes are transferred to the federal or local labor courts ("Labor Courts"), which are dependent on the federal or local judicial branch. Local Labor Courts should be functional and integrated by 2022, while Federal Labor Courts should be operational by 2023.

Employers must comply with the occupational health and safety regulations.

8.5. Occupational health and safety

All employers must comply with the occupational health and safety regulations.

Administrative agencies verify compliance with these regulations through the Labor Inspectorate.

When employers infringe the regulations, they may be subject to fines. When imposing fines, administrative agencies consider (i) recurrence, (ii) employers' economic capacity, (iii) number of affected employees and other factors, and (iv) the seriousness of the infringement.

8.6. Collective employment relationships

All employees have the right of association, the right to collectively bargain, the right to call to strike, and the right to choose whether to join a union.

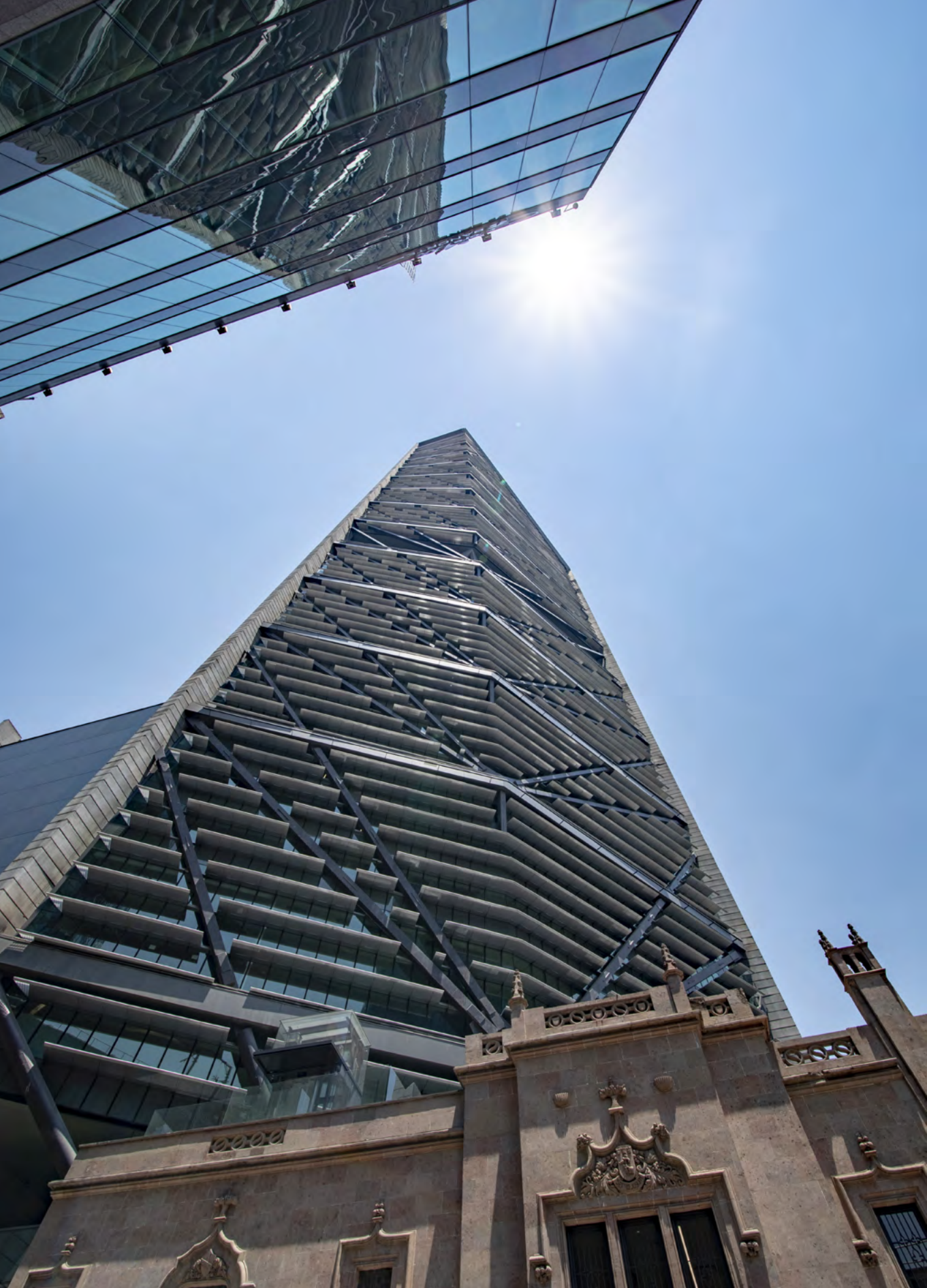
Employees also have the right to form a coalition to create unions to study, improve and defend their interests.

Through unions, employees have the right to file a call to strike, demanding that the employer negotiate and execute a collective bargaining agreement ("CBA"). The CBA governs employment relationships, benefits, and the terms and conditions of employment between the unionized employees and the employer.

All CBAs must be filed with the Federal and Local Boards of Conciliation and Arbitration (*Juntas Locales y Federales de Conciliación y Arbitraje*). Salaries must be renegotiated every year and benefits every two years.

Every CBA, whether a new or revised/renegotiated version, must be approved by the majority of employees covered by that CBA, following the voting procedure established in the FLA.

- Regarding the Constitutional Amendment of 2017, and subsequent amendments to the FLA in May 2019, a new Federal Center for Conciliation and Labor Registry (*Centro Federal de Conciliación y Registro Laboral*) should be operational by May 2023 (the "Federal Center").
- The Federal Center will be in charge of (i) registering union organizations and their internal administrative processes; (ii) registering and filing CBAs; (iii) handling prior procedural steps for obtaining the "Representation Certificate" and for the approval of CBAs by the employees they cover; and (iv) registering and filing internal labor regulations. These tasks—which the Labor Boards currently carry out—will be transferred to the Federal Center.



9 Securities

The Mexican securities market is growing continuously.

9.1. Overview

The Mexican securities market is growing continuously, with the structuring and formalization of several products boosting the capital and debt markets. Major changes aimed at boosting the market include (i) granting the concession to operate the new Institutional Stock Exchange (*Bolsa Institucional de Valores*); (ii) opening up competition; (iii) simplifying and digitalizing the issuance process; and (iv) improving instruments and products.

The federal government regulates the legal framework for the securities market through its federal government entities. The Securities Market Act (*Ley del Mercado de Valores*) gives the general operational framework for securities commercial acts, and regulations (*circulares*) issued by the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*, or "CNBV," in its Spanish acronym), which is an independent agency of the Ministry of Finance and Public Credit *(Secretaría de Hacienda y Crédito Públic*o). The Central Bank of Mexico (*Banco de México*) (the "Bank of Mexico") provides the specific rules for operating the markets, the products, the issuers and other participants.

The main rules applicable to securities and issuers are in the General Ruling for Issuers (*Circular Única de Emisoras – Disposiciones de Carácter General Aplicables a las Emisoras de Valores y a Otros Participantes del Mercado de Valores*):

- The **Ministry of Finance and Public Credit** (Secretaría de Hacienda y Crédito Público) facilitates transactions and promotes the market's development, expansion and competitiveness.
- The **Bank of Mexico** promotes the development of the Mexican financial system.
- The **CNBV** has technical autonomy and executive powers over the Mexican financial system and is the main regulator of the stock exchanges, issuers, products and participants. It supervises and regulates market participants, authorizes public and private offerings, and it has the power to investigate, request information, and issue advice, penalties and warnings to market participants. It also approves the internal operation of the stock exchanges, and it manages and oversees the National Securities Registry (*Registro Nacional de Valores*).

There are two stock exchanges for trading securities: the Mexican Stock Exchange and the Institutional Stock Exchange.

9.2. Stock exchanges

Mexican stock exchanges are private corporations with a concession issued by the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*). Currently, there are two stock exchanges for trading securities: (i) the Mexican Stock Exchange (*Bolsa Mexicana de Valores*, or "BMV," in its Spanish acronym); and (ii) the Institutional Stock Exchange (*Bolsa Institucional de Valores*, or "BIVA," in its Spanish acronym). For trading futures and options, Mexico also has a derivatives exchange (*Mercado Mexicano de Derivados*, or MexDer), which is a subsidiary of the BMV. Derivatives (mainly warrants) can also be listed in BIVA.

Available instruments that may be listed in Mexico include (i) private companies' stock and equity; (ii) private funds (*fondos de inversión*) and warrants; (iii) debt certificates (including special structured instruments, called *Certificados Bursátiles*, or "CEBURES," in its Spanish acronym, including those issued through trust "CEBURES Fiduciarios"); (iv) debentures; (v) government bonds; (vi) Capital Development Certificates (or "CKDes," in the Spanish acronym), a special structured investment instrument that uses an investment trust; (vii) Investment Project Securitization Certificates (or "CERPIS," in the Spanish acronym), a special structured investment instrument similar to CKDes, but only listed through a restricted public offer to qualified investors; (viii) FIBRAS (*Fideicomiso de Infraestructura en Bienes Raíces)*, an investment trust similar to real estate investment trusts ("REITS"); and (ix) FIBRA-E, FIBRAS focused on energy and infrastructure projects.

Each stock exchange in Mexico has its own system for trading instruments and products: BMV uses a system known as BMV-Sentra Capitales, and BIVA uses the BIVA-OPEL System. For transactions on the BMV, the information must be filed through an electronic system called Emisnet; while the BIVA uses a system called DIV.
Each stock has its own investment index. The BMV's Pricing and Trading Index *(Índice de Precios y Cotizaciones*, or "IPC," in its Spanish acronym) is calculated, produced, operated and distributed by S&P Dow Jones Indices, which covers the 35 most traded and liquid shares that comply with a specific size and liquidity criterion (it excludes FIBRAS and other trust investment schemes). There is also the Financial Times Stock Exchange (FTSE), in which BIVA's index is calculated and distributed by the London Stock Exchange Group. This index includes FIBRAS, and its calculation is based on the capitalization value of each issuer that is part of the index and covers small, medium and large issuers.

9.3. Offerings

Securities issued in Mexico are classified as equity or debt instruments. The Securities Market Act defines a security (*valores*) as "any stock, equity interest, obligations, bonds, convertible bonds, certificates, promissory notes, change letter, and any other security, nominative or

A public offering of securities can be made through mass means of communication or to an unidentified public at large or addressed to specific investors.

in nominative, registered or not in the Registry (as defined under the Securities Market Act) that can be exchanged through the securities markets referred to in the Securities Market Act, that are issued in series or in one moment and that represent the capital stock of any company, a representative stake in an asset or participation in a collective loan or any individual loan, pursuant to Mexican or foreign law." A public offering of securities can be made through (a) mass means of communication or to an unidentified public at large; or (b) addressed to specific investors (exclusively addressed to "qualified" or "*institutional*" investors).

Equity may be issued either as stock or as convertible debentures. Stock issued as equity may vary, depending on whether (i) they include any corporate rights (voting rights), and (ii) the stock is quoted directly or through depositary instruments (Ordinary Participation Certificates - *Certificados de Participación Ordinarios*, or "CPOs," in the Spanish acronym), commonly used in regulated industries where foreign investment is limited.

Debt may be represented by bills, bonds, notes, securities certificates, trust securities certificates, federal governmental development paper, or federal treasury certificates.

In 2009, regulations were issued to permit the offering of a new instrument called CKDes (as defined and explained above), designed for private equity funds to raise capital or to securitize the "whole business." CKDes were included in the Stock Market Act in 2014. Also, in 2014, indexed certification and real estate certificates (issued by FIBRAS or REITS) were incorporated into the Stock Market Act, although their issuance had begun a few years earlier.

In 2015, CERPIs (as defined and explained above) were introduced, after they were included in the general provisions applicable to securities issuers and other market participants regulations (*Circular Única de Emisoras*). In the last quarter of 2015, the implementation of FIBRA-E (as defined and explained above), a new kind of investment trust focused on specific projects related to energy and infrastructure, was announced.

9.4. Authorizations

To carry out a securities offering in Mexico, issuers must (i) get approval from the CNBV; (ii) get approval from the stock exchange in which the securities will be listed (either BMV or BIVA); (iii) register the securities considered issued with the National Securities Registry (*Registro Nacional de Valores*); (iv) deposit physical or digital securities with the depositary institution S.D. INDEVAL, S.A. de C.V. ("Indeval"); and (v) authorize and publicly disclose other information documents, such as prospectuses, offering memoranda, legal opinions and financial statements.

The recording and approval process for foreign issuers is almost identical to the one applicable to Mexican issuers. In addition to the local exchange, according to the CNBV, 124 new foreign companies were listed on the International Quotations System in 2017.

Issuers must also enter into underwriting agreements with a broker- dealer ("Financial Sponsor"). The Financial Sponsor will review and analyze the issuer's business and activities information filed with the CNBV and, depending on the security, it may also coordinate and ensure that the issuance is rated by one of the authorized rating agencies (e.g., Fitch Ratings, Standard & Poor's and Moody's HR Ratings). Financial Sponsors are liable for any damage caused by the violation of applicable laws during the issuance of securities, including the issuer's Know Your Client (KYC).

Issuers must apply simultaneously to register securities with the CNBV and to list them with the stock exchange. After filing, in almost all cases, the issuer will receive written notice from the stock exchange with general comments on the information that accompanied the application. Later, and once all observations have been addressed, the issuer will be given a general favorable opinion issued by the stock exchange. The issuer must then file this opinion with the CNBV, which will make comments. After the issuer complies with those comments, the CNBV grants authorization. To register and list the securities, this authorization should be filed with the appropriate stock exchange. Finally, a prospectus for the placement of securities (usually containing financial, administrative, economic, accounting and legal information about the issuer and the securities to be offered) will be issued to potential purchasers. In addition to the prospectus, the CNBV is also authorized to require certain supplements or documents describing the "key information" for the investment.

The process can take two to four months, depending on the complexity of the securities and how thoroughly the requirements are met. Part of the process usually involves informal meetings between the issuer, the underwriter and the CNBV, to answer inquires, submit additional documents, cover all aspects of the process, and ensure an efficient review is carried out on filing for authorization.

The CNBV authorizes the issuance and records the securities in the National Securities Registry, for the issuer to take the steps leading to a formal public offer in Mexico.

9.5. International listings

Securities issued in foreign stock exchanges can be listed in Mexico, provided they comply with specific requirements. The listing must use the International Quotations System. This mechanism is provided by the Securities Market Act for quoting securities (i) that have not been publicly offered in Mexico and that have not been registered with the CNBV, but that are listed in foreign stock markets recognized by the CNBV; or that are issued by private foreign entities recognized by the CNBV.

Stock certificates do not have to be held physically in Mexico, as Indeval may enter into agreements with foreign securities depository firms or banks, for the custody of securities certificates. Securities are listed as common stock, not as depositary receipts.

Also, specific requirements for listing securities on the above international quotation system (e.g., information and documentation reporting obligations and local regulatory clearances) must be complied with.

Under Mexican law, Mexican companies can issue securities abroad, either directly or through a trust or any similar structure, provided the issuer notifies the CNBV of the main characteristics of the offer and the General Ruling for Issuers (*Circular Única de Emisoras – Disposiciones de Carácter General Aplicables a las Emisoras de Valores y a Otros Participantes del Mercado de Valores*) is complied with.

9.6. Reporting

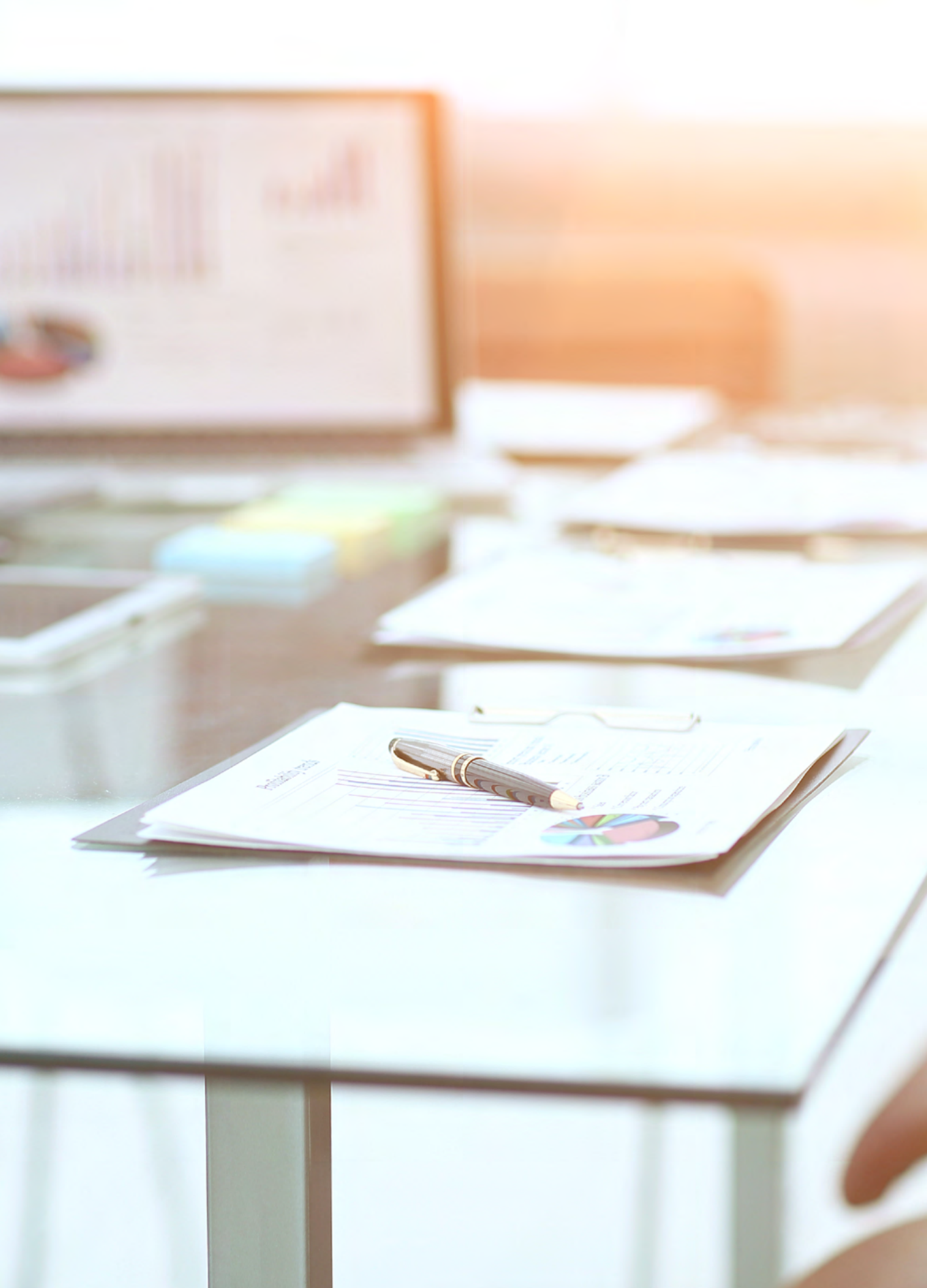
Quarterly and annual reports must be submitted to the CNBV and the stock exchange.

Under Mexican law, quarterly and annual reports must be submitted to the CNBV and the stock exchange (including financial, economic, accounting, management and legal information). The applicable reporting obligations may vary, depending on the type of issuer and security involved.

Further obligations are imposed on holders of securities that reach certain ownership thresholds: (i) holders acquiring 10% or more of an issuer's equity must notify the CNBV and stock exchange of the purchase; and (ii) acquisitions exceeding 30% of an issuer's equity automatically triggers an obligation for the potential purchaser to issue a mandatory (forced) and binding tender offer to purchase the outstanding stock.

The issuer must disclose immediately all information that may affect the valuation and pricing of its securities. Insiders are subject to blackout periods and information disclosures.

All information must be immediately disclosed to the appropriate stock exchange: for the BMV, through the Emisnet electronic system; and for BIVA, through the DIV electronic system.



10 Regulated Sectors

10.1. Overview

As in most jurisdictions, certain sectors and activities in Mexico are subject to specific regulations, authorizations and, in some cases, limitations concerning foreign investment. Practically all regulations on these matters are established in Mexico at the federal level, whereas local regulations mostly deal with general construction matters and commercial establishments, without a particular focus on sectors and industries.

Certain sectors and activities in Mexico are subject to specific regulations and authorizations.

The main regulated sectors in Mexico are the following:

- Financial services industry
- Insurances and bonds
- Energy and natural resources
- Healthcare products and services
- Technology, media and telecommunications

10.2. Financial services industry

Mexico's banking system is governed by the Credit Institutions Act (*Ley de Instituciones de Crédito*), which establishes the authority of the Mexican state to direct the national banking system through the Bank of Mexico and which provides the organizational rules and functions of banks (both private and state owned) and other financial services providers.

Among other obligations, the Credit Institutions Act establishes the requirements for banks relating to authorizations to operate, capitalization and liquidity, corporate governance and structure, transactions permitted in the financial sector, and insolvency and bankruptcy proceedings. It also establishes sanctions for infringements to the provisions established under the act, which, depending on the nature and scope of the case, are enforced by the authorities referred to below.

Generally, the national banking system is comprised of (i) the Bank of Mexico; (ii) retail banking institutions; (iii) development banks; and (iv) public funds (trusts) created by the federal government to carry out specific financial or credit transactions. While foreign investment is fully allowed for retail banking institutions, under the Foreign Investment Act (*Ley de Inversión Extranjera*), only Mexican individuals or companies with no foreign investment can own development banks.

In recent years, SOFOMES have become active players in the financial market.

The CNBV is the federal agency tasked with supervising and regulating financial activities. The CNBV is a governmental body separate from, but subordinate to, the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*), a federal ministry that wields authority in the financial sector, in accordance with the powers allocated to it by the different federal laws.

In addition to the CNBV, there are other agencies with authority in the financial sector; namely, (i) the National Commission for the Protection and Defense of Users of Financial Services (*Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros*, or CONDUSEF, in its Spanish acronym); and (ii) the Institute for the Protection of Bank Savings (*Instituto para la Protección al Ahorro Bancario*, or IPAB, in its Spanish acronym).

Following the usual scheme of the administrative law system, the above authorities also issue regulations and administrative provisions to financial entities that elaborate on the requirements and obligations established in the Credit Institutions Act and other applicable laws. The most important piece of legislation applicable to banks is the Sole Banking Circular (*Circular Única de Bancos*) issued by the CNBV.

While retail and development banks are perhaps the most representative players of Mexico's financial system, there are other entities that also carry out transactions in the financial market and that are regulated by different financial laws and provisions in force, such as financial groups holdings, investment funds, credit unions, exchange houses, rating agencies, securities issuers, and savings and loans entities.

In recent years, the so-called multiple purpose financial companies (*sociedades financieras de objeto multipl*e, or "SOFOMES," in the Spanish acronym) have become active players in the financial market. SOFOMES are financial institutions that are allowed to provide loans for financing activities and projects, with the sole restriction of

gathering funds without resorting to deposits and saving accounts from the public.

Due to the rapid growth of FinTech companies and services in Mexico, in March 2018, the Congress passed the FinTech Companies Act (*Ley para Regular las Instituciones de Tecnología Financiera*), introducing regulations for different services and products, such as crowdfunding, lending, payment systems, blockchains, insurance underwriting and digital wallets. The secondary regulation, supervision and enforcement of these matters corresponds to the Bank of Mexico, the CNBV and the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*), in accordance with the allocation of power and authority established in law.

10.3. Insurances and bonds

In Mexico, companies carrying out activities relating to insurances, reinsurances and bonds are governed by the Insurance and Surety Companies Act of 2013 (*Ley de Instituciones de Seguros y de Fianzas*). Also, insurance contracts are governed by the Insurance Contract Act (*Ley Sobre el Contrato de Seguro*), enacted in 1935; and the Navigation and Maritime Commerce Act establishes specific regulations for insurances associated with maritime transactions. Accordingly, insurance contracts and bonds are not entirely consensual in Mexico because, depending on the type and scope of a given insurance policy, there are certain statutory clauses that should be established to be valid.

Among other important aspects, the Insurance and Surety Companies Act establishes the requirements to request and obtain the authorizations to offer insurance and surety services; restrictions on procuring insurance from foreign companies in Mexico; corporate governance and capitalization requirements of insurance and surety companies and their affiliates; commercial restrictions applicable to insurance and surety companies; authorizations and regulations applicable to brokers and adjusters; and procedures related to claims and complaints, accounting rules, and sanctions.

The National Insurance and Surety Commission (*Comisión Nacional de Seguros y Fianzas*), a governmental body that is subordinate to the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*), is the authority tasked with supervising and enforcing matters related to insurances and bonds. The National Insurance and Surety Commission also has regulatory functions within the scope provided by the law. Therefore, the most important piece of regulation under the Insurance and Surety Companies Act is the so-called Insurance and Sureties Sole Circular (*Circular Única de Seguros y Fianzas*).

The Insurance and Surety Companies Act lists three different types of insurances; namely, (i) life, (ii) health and personal injuries, and (iii) civil liabilities and property damage. The act lists five different types of bonds; namely, (i) fidelity bonds; (ii) judicial bonds (bail, parole and injunctive reliefs); (iii) administrative bonds for public works, procurement activities and tax matters; (iv) credit bonds; and (v) guarantee trusts.

All insurance and surety companies and intermediaries participating in this sector are required to comply with rules and obligations concerning capitalization, assets, investments, accounting and reporting.

10.4. Energy and natural resources

The energy and natural resources sector in Mexico is divided into three main areas; namely, (i) oil and gas, (ii) power, and (iii) mining.

Oil & Gas

The oil and gas sector is mainly governed by the Hydrocarbons Act (*Ley de Hidrocarburos*), which establishes a free competition regime for its development, under the direction of the Ministry of Energy, which acts as the policymaker. The main activities comprising the oil and gas sector is reconnaissance, surface exploration, exploration and extraction (upstream), import and export, storage, refining, marketing, transporting, distribution, and retailing (midstream and downstream).

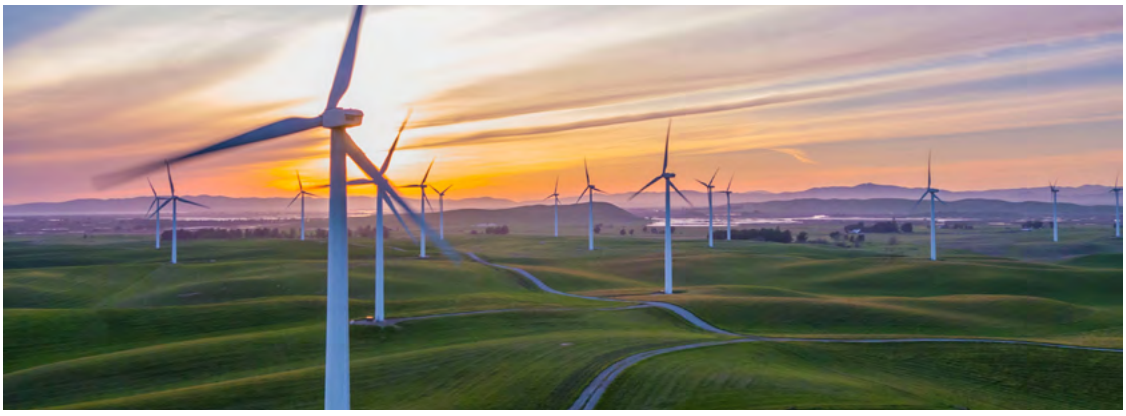
Under the Coordinated Regulatory Bodies in Energy Matters Act (*Ley de Órganos Reguladores*

Coordinados en materia Energética), the National Hydrocarbons Commission (*Comisión Nacional de Hidrocarburos,* or "CNH," in its Spanish acronym) is empowered to (i) issue regulations on upstream matters, and (ii) formalize and administer the contracts that the Mexican state enters into with individuals or with *Petróleos Mexicanos* (known as PEMEX) to explore and produce hydrocarbons.

Concerning upstream activities, the Hydrocarbons Act establishes that they may be carried out through (i) assignments granted by the Mexican state to the state's productive companies (e.g., PEMEX); (ii) migrations of assignments previously granted to PEMEX, in which case, the migration is authorized by the Ministry of Energy either individually or jointly with a private party (the so-called farm outs), meaning the third party must be selected through a public bidding procedure carried out by the CNH; or (iii) Hydrocarbon Exploration and Extraction Contracts (*Contratos de Exploración y Extracción de Hidrocarburos*), awarded either individually or in a consortium formed by several oil companies through a public bidding procedure carried out by the CNH. Determining the type of contract is established in the bidding guidelines published by the CNH. The Hydrocarbon Revenue Act (*Ley de Ingresos Sobre Hidrocarburos*) establishes four different contract types; namely, (i) service contracts, (ii) profit sharing contracts, (iii) production sharing contracts, and (iv) license contracts. The Hydrocarbon Revenue Act also regulates the considerations and royalties corresponding to each of the four contract types. Currently, approximately 111 contracts have been signed with various national and international companies to carry out upstream activities, with the most numerous being license contracts and production sharing contracts.

The royalties or considerations that the Mexican government receive are managed through a trust called the Mexican Petroleum Fund for Stabilization and Development (*Fondo Mexicano del Petróleo para la Estabilización y Desarrollo*), whose purpose is to (i) manage revenues transparently, and (ii) create and manage a long-term savings reserve.

Concerning the midstream and downstream sector, the Hydrocarbons Act defines as permitted activities the import and export, storage, refining, marketing, transportation, distribution, and retailing of hydrocarbons, natural gas and petroleum derivatives such as oil and petrochemicals. Permits for the import, export, refining and processing of gas are granted by the Ministry of Energy. On the other hand, permits for transport and storage of hydrocarbons and oil products, transport by pipeline and storage of petrochemicals are granted by the Energy Regulatory Commission (*Comisión Reguladora de Energía*). This regulatory body is also responsible for supervising the distribution of gas and oil products, the regasification, liquefaction, compression and decompression of natural gas, the marketing of natural gas and oil products to the public, and the management of integrated systems such as the Integrated National Natural Gas Transportation and Storage System (*Sistema de Transporte y Almacenamiento Nacional Integrado de Gas Natural*).



Finally, the Industrial Safety and Environmental Protection Agency of the Hydrocarbons Sector (*Agencia de Seguridad Industrial y de Protección al Medio Ambiente del Sector Hidrocarburos*), a separate but subordinate body of the Ministry of Environment and Natural Resources, is the federal authority tasked with supervising, regulating and enforcing environmental and industrial safety matters in the hydrocarbons sector.

Electricity sector

The Electricity Industry Act provides a free competition regime for the generation and commercialization of electricity.

There are several laws that regulate the electricity sector in Mexico, the most important being the Electricity Industry Act (*Ley de la Industria Eléctrica*), which provides a free competition regime for the generation and commercialization of electricity. Several other laws also regulate this sector, such as the Energy Transition Act (*Ley de Transición Energética*), which provides the schemes and mechanisms for the migration of energy based on fossil fuels to energy generation through renewable and clean sources; and the Geothermal Energy Act (*Ley de Energía Geotérmica*), which regulates the exploitation of geothermal resources in subsoil for the generation of electricity through the granting of concessions.

Under the Constitution of Mexico, the transmission and distribution of electric energy are considered a public service, which is why no concessions are granted and the services are carried out exclusively by the Mexican state, either on its own or through public-private agreements. Therefore, private parties can participate in the operation, maintenance, management, extension or finance of transmission and distribution infrastructure.

Private parties are allowed to participate in generation and supply activities, through permits and entering into interconnection agreements with the state-owned Federal Electricity Commission (*Comisión Federal de Electricidad*, or "CFE," in its Spanish acronym). The CFE is the authority that grants the permits in the electricity sector and that issues regulations for the Wholesale Electricity Market (*Mercado Eléctrico Mayorista*, or "MEM," in its Spanish acronym). The National Energy Control Center (*Centro Nacional de Control de Energía,* or CENACE, in its Spanish acronym) is the decentralized agency responsible for operating the MEM. In the MEM, participants can sell and buy (i) electrical energy, (ii) power, (iii) clean energy certificates, (iv) related services, and (v) any other associated product required to operate the national electrical system.

The current legal framework provides for the possibility of holding auctions in the MEM. However, in recent years, the current administration has not called for auctions. These auctions are mechanisms that allow investors to enter into contracts in a competitive manner and under efficient conditions to satisfy in advance the needs for energy and related products marketed in the electricity market. Under this scheme, there are medium- and long-term auctions. Medium-term auctions allow the acquisition of products

offered by the generators to satisfy the demand in the short term (from 0 to 3 years), while long-term auctions are based on demand estimates in the long term (from 15 to 20 years).

The electricity sector is currently undergoing a potential overhaul due to (i) a bill to amend the Constitution of Mexico introduced by President López Obrador, aimed at granting CFE control of the electricity sector in Mexico and preference to dispatch the electricity produced by CFE's power plants; and (ii) the amendments to the Electricity Industry Act passed in March 2021 (currently enjoined as a result of *amparo* actions heard by the judiciary), the constitutionality of which is being ruled on by the Supreme Court of Justice.

Mining

In Mexico, mineral exploration is carried out through mining concessions and assignments, which are granted by the Ministry of Economy either through direct awards or through competitive bidding.

The Ministry of Economy is also the authority responsible for regulating mining matters, as well as for registering concessions and experts in these matters.

Under the Hydrocarbons Act, to extract natural gas contained in the mineral coal vein through a mining concession, having the CNH carry out a bidding process is not necessary, and the exploration and production contract may be directly awarded to the holders of the concession.

10.5. Healthcare products and services

In Mexico, several services and products for human consumption are subject to specific healthcare regulations, which are contained mainly in the General Health Act (*Ley General de Salud*). The Federal Commission for Protection against Sanitary Hazards (*Comisión Federal para la Protección contra Riesgos Sanitarios*, or "COFEPRIS," in its Spanish acronym), a separate but subordinate agency of the Ministry of Health, is the federal authority tasked with supervising, regulating and enforcing human health matters in Mexico.

Medicines, drugs and medical devices require a sanitary registration to be marketed in Mexico, as established in the Medical Goods Regulation (*Reglamento de Insumos para la Salud*).

The procedures may differ depending on the product's characteristics (e.g., new molecules, generics, biotechnological medicines, and narcotics and psychotropic drugs) and the place of manufacturing. For example, certain products approved by the corresponding food and drug administrations of the United States, the European Union, Canada, Switzerland, Australia and Japan may be eligible to undergo a "fast-track" registration procedure in Mexico. Also, medicines, drugs and medical devices should comply with official standards and regulations on manufacturing practices, labeling, and packaging, and, if they are manufactured abroad, require prior import authorizations issued by COFEPRIS.

The Regulation for the Sanitary Control of Products and Services (*Reglamento de Control Sanitario de Productos y Servicios*) establishes the obligations on manufacturing, exporting and importing products, as well as the standards for services delivery. These regulations include the following products: milk and its derivates, eggs and its derivates, meat, fish, fruits and vegetables, alcoholic and non-alcoholic drinks, tobacco, grains, oils, cocoa, coffee, tea, prepared food, sweeteners, food supplements, perfumes and cosmetics, health products, and insecticides. Most of these products are also subject to labeling and packaging regulations, which are established in Mexican official standards. Also, based on recent rulings issued by the Supreme Court of Justice, Congress is now discussing a bill of law aimed at approving and regulating the manufacturing, sale and consumption of cannabis. While a number of judicial precedents uphold and allow the recreational use of cannabis as a licit activity, the applicable legislation is yet to be defined and passed.

Pesticides, plant nutrients, fertilizers and toxic substances must be (i) registered with COFEPRIS to be marketed and used in Mexico, and (ii) comply with official standards related to labeling and packaging.

Finally, in 2000, the then president enacted the Regulations of the General Health Act for Advertising (*Reglamento de la Ley General de Salud en Materia de Publicidad*). This piece of legislation imposed obligations on advertisers and advertising agencies with the purpose of avoiding the spread of misleading information on products and services for human consumption and preventing minors from consuming tobacco and alcohol. Particularly, these regulations establish different principles and obligations (including permits and notices) for each of the following services and products: (i) healthcare services (e.g., hospitals and clinics); (ii) food and non-alcoholic drinks; (iii) infant formula; (iv) food supplements; (v) alcoholic drinks and tobacco; (vi) medicines and herbal remedies; (vii) medical devices and health products; (viii) perfumes and cosmetics; (ix) pesticides, plant nutrients, fertilizers and toxic substances; and (x) biotechnological products.

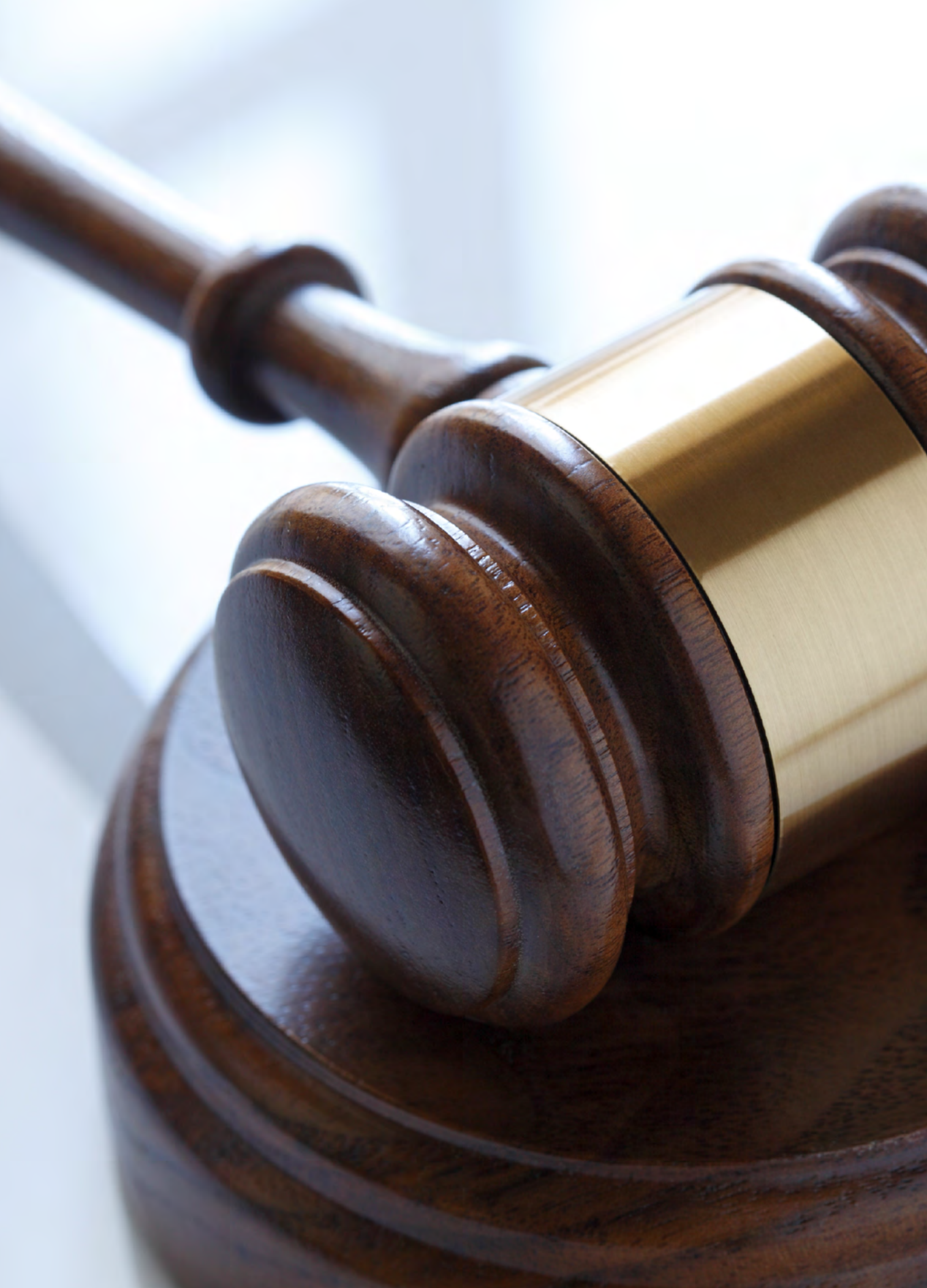
10.6. Technology, media and communications

In the context of the so-called structural amendments made during the administration of former President Enrique Peña Nieto, and following the enactment of the constitutional amendment on telecommunications in mid-2013, in July 2014, the Federal Congress passed the Federal Telecommunications and Broadcasting Act.

Perhaps the most significative change in this sector is in the autonomy and independence afforded to the IFT, which was formerly a separate but subordinate body of the Ministry of Communications and Transportation. Another remarkable feature of the constitutional amendment is the authority bestowed to the IFT to supervise, investigate, regulate and enforce antitrust matters in the telecommunications sector.

In Mexico, the state owns the radio spectrum and orbital resources. Using, enjoying and exploiting frequency bands or orbital resources is subject to administrative concession (similar to a license) and, in turn, certain agreements relating to the licensed resources are subject to the IFT's authorization. Concessions for commercial purposes, as well as certain concessions for private purposes, are only granted by the IFT through a public bidding process.

The Federal Telecommunications and Broadcasting Act also establishes specific regulations on other matters, such as governmental fees and considerations, access to and interconnection of networks, asymmetric regulation, assets unbundling, service delivery, the termination and reversal of concessions, number allocation and portability, and must-carry rules.



11 Dispute Settlement

11.1. Civil and commercial litigation

Arbitration has become the chosen method for dealing with large and complex commercial disputes.

Civil and commercial jurisdiction

Generally, jurisdiction is determined by the following criteria:

a. Subject matter: either civil or commercial.

b. Territory: state-based (generally, a court has jurisdiction where the defendant is based or where it is resident).

c. Amount of the dispute: laws expressly state the amounts that may be heard by a specific court.

d. Submission of the parties: parties may generally choose the jurisdiction or accept the jurisdiction of a court. The submission to a specific forum involves waiving the original jurisdiction corresponding to the territory criteria. A claimant may also submit to certain jurisdiction by filing a lawsuit before a particular court and the defendant by responding to a lawsuit, except when the defendant expressly rejects the court's jurisdiction in its response.

e. Parties may also waive a court's jurisdiction and submit their disputes to alternative dispute resolution proceedings, such as arbitration.

Court proceedings

Court structure

Mexico is a federal republic whose judiciary system is divided into federal and state courts. State or local courts hear civil disputes, and both state and federal courts have jurisdiction over commercial disputes.

The structure of the courts is often the following: a) first instance by a single judge (state or federal); b) court of appeals by three magistrates; and c) *amparo* court by a federal judge or by three federal magistrates.

Civil and commercial litigation proceedings

Mexico's civil or commercial litigation proceedings generally follow two instances: a) first instance, and b) appeal or second instance. The claimant and defendant may also seek an extraordinary constitutional appeal—referred to as *amparo* in Mexico)—to seek relief against the violation of human rights, which may include procedural violations; however, this is considered an extraordinary challenge and not as a third instance within the process.

Procedures are generally divided into the following steps: a) claim; b) response to the claim and counterclaim; c) evidence period; d) closing arguments; e) final judgment; f) appeal; and g) extraordinary constitutional appeal (*amparo*).

Claimants seeking civil or commercial litigation must file a lawsuit or claim to the court that has jurisdiction over the case, as well as all documents and names of witnesses they intend to call to for their testimony.

There is no discovery under Mexican procedural law. However, parties may request the court to order the opposing party, third parties, or government offices to submit documents that should be clearly identified. Parties may also present other relevant evidence.

First instance judgments are generally subject to appeal. The appellate courts may confirm, revoke or modify the first instance court's decision. Appellate courts are limited to reviewing the arguments stated by the appellant party. Specifically, they review any mistakes in law or facts stated in the first instance judgment.

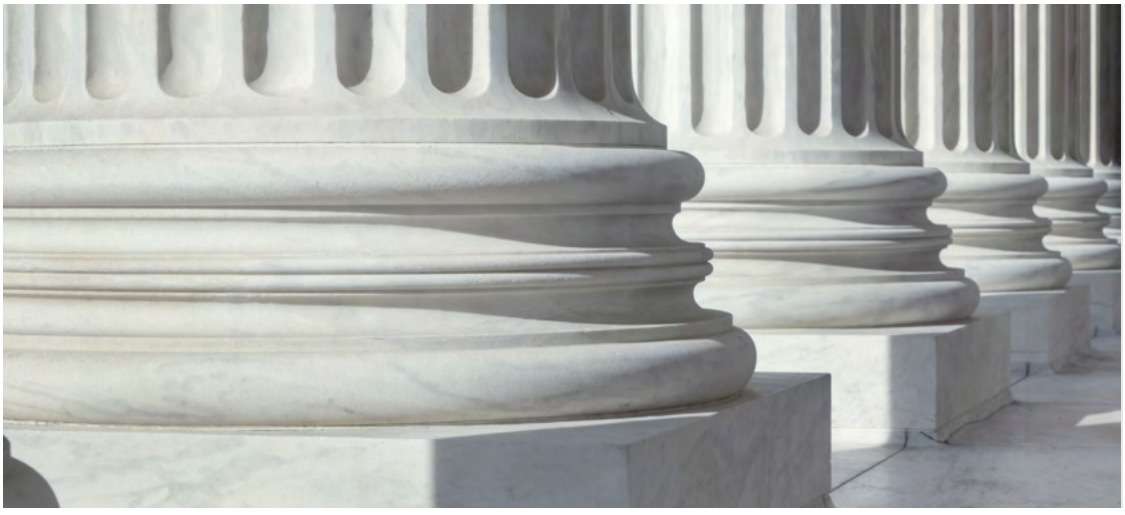
The final judgment in civil or commercial proceedings before local/state courts or federal courts is almost always subject to a direct *amparo* complaint. As a general rule, a party must exhaust ordinary challenges, including the appeal process, before starting *amparo* proceedings.

A direct *amparo* is usually heard by federal collegiate courts. In exceptional circumstances, such as a straightforward interpretation of a constitutional provision, the Mexican Supreme Court of Justice may rule on a direct *amparo*. Indirect *amparos* are usually heard by federal district courts and may only be filed in particular circumstances that differ from a final judgment on the merits, but involve a violation of human rights under the Constitution of Mexico or international treaties.

Final judgments vary depending on the relief sought, but generally, a court can declare or order (i) a contract to be terminated; (ii) a specific action to be carried out; (iii) direct and immediate damages (including moral damages) to be paid; (iv) direct and immediate loss of profits to be paid; or (v) a declaratory relief. Although Mexico is understood as only allowing compensatory damages, the Mexican Supreme Court made a landmark decision in 2013 that seems to allow punitive damages under moral harm cases.

Oral trials

In 2020, a crucial reform to the Commerce Code entered into force that radically changed the commercial procedural system from a written to an oral form. This reform intends to force judges to be present in the preparation and presentation of all evidence because, in the written system, they did not usually discharge and deliver the evidence, meaning they rarely had any contact with the parties involved.



In 2020, a crucial reform entered into force that changed the commercial procedural system from a written to an oral form.

Today, the oral process applies to all commercial claims that have already been quantified when filed or can be quantified during the procedure. Trials concerning non-quantifiable claims must be conducted in writing.

Key points of the 2020 reform:

- After the parties' arguments, judges must decide which documents or evidence are admissible to trial in a preliminary hearing.
- In the trial hearing, Parties should explain their case and conclusions orally.
- Whereas interrogations had a yes/no question format in the written system, unrestricted cross-examination was incorporated into the oral system.
- Judges must pronounce their final judgment once the trial hearing ends.
- Specialized courts were created to conduct these types of hearings in the Federal Jurisdiction.
- There are no ordinary recourses available in this trial, and the final judgment can only be challenged with a direct *amparo*.

Since the reform entered into effect, the average time for the pronouncement of final judgments has been significantly reduced. The direct *amparo* against the final decision of the trial will continue to be carried out in written form.

Enforcement procedures

Generally, decisions of first and second instance courts are enforceable by law. However, in practice, a court will not enforce a final judgment until it becomes final (i.e., when the decision may not be subject to any further challenge).

The prevailing party may seize the losing party's assets to secure payment and eventually foreclose those assets at a public auction. If the losing party is insolvent, the prevailing party may file bankruptcy or reorganization proceedings to try to recover the amount owed to it.

The Commercial Code also allows executive proceedings, through which the claimant, through an enforceable title (such as debt

securities, promissory notes, credit titles, and recognition of debt before a notary public or authority) may request the court to carry out a judicial seizure from the moment the respondent is notified.

Administrative jurisdiction

Generally, in administrative matters, jurisdiction is determined by the following criteria:

- **Territory:** the general rule is that the court with jurisdiction is the one that has authority where the respondent is based or is resident. However, the court may also be the one with jurisdiction in the place where the challenged act has its effects.
- **Nature of the respondent authority:** although there are exceptions, the general rule is based on the defendant's authority, which may be state or federal, meaning jurisdiction may also be state or federal.

Generally, administrative justice reviews the acts of authorities and the constitutionality of administrative norms.

Administrative courts and litigation process

Mexico's administrative justice system is divided into three main forums:

i. Federal administrative courts

ii. State administrative courts (32 in total)

iii. Administrative *amparo* courts (which review constitutional claims).

Forums (i) and (ii) belong to the executive branch (either federal or local), while forum (iii) belongs to the judiciary branch.

Generally, federal and state administrative courts handle— from a legal perspective—cases related to the annulment of claims filed against authoritative acts, while *amparo* administrative courts handle— from a judicial perspective— indirect *amparo* claims filed against general norms and authoritative acts. This means federal and state administrative courts review the authorities' acts in accordance with specific laws, while administrative *amparo* courts review general norms and acts in accordance with the Constitution of Mexico.

Whether to use the annulment claims or indirect *amparo* claims depends on what the challenge is based on and the urgency of obtaining temporary relief measures or injunctions. Administrative *amparo* courts tend to be faster at making injunctions and taking interim measures.

Both procedures have similar structures. They are habitually divided into the following steps: a) claim; b) response to the claim; c) evidence period ; d) closing arguments, e) final judgment; and f) appeal. Regarding the annulment claim, there is one last instance, which is the direct *amparo* claim or administrative review. This works as described in the Civil and commercial litigation section. In an indirect *amparo* appeal, the appeal is the final instance.

Final judgments vary depending on the relief sought, the nature of the challenged action, and the way claims were filed. Still, a court can generally declare or order (i) the authoritative act to be annulled, (ii) an act or norm to be invalidated, (iii) a specific action to relieve the claimant to be carried out, and (iv) the authority not to carry out the challenged act again.

11.2. Commercial arbitration and mediation

Since 2008, the Constitution of Mexico, under article 17, has expressly acknowledged alternative dispute resolution mechanisms as valid methods for resolving disputes.

Arbitration

In the past decade, arbitration has become the chosen method for dealing with large and complex commercial disputes. Arbitration is mainly used in the following industries: (i) energy; (ii) construction; (iii) mergers, acquisitions, and joint ventures that involve complex issues of fact and law; and (iv) public works contracts.

The arbitration law is contained in the Mexican Commercial Code and is based on the UNCITRAL Model Law of 1985. These rules apply to any arbitral proceedings seated in Mexico that relate to commercial disputes.

Arbitration agreement

For an arbitration agreement to be valid, it should be (i) stated in writing and signed by the parties or by an exchange of letters, telexes, telegrams or faxes, or any other means of telecommunication that adequately express or record the agreement; (ii) clearly inferred from a written complaint and a written answer to the complaint; or (iii) referenced in an agreement to a document that contains an arbitration clause.

For an arbitration agreement to be enforceable, it must meet the following requirements:

i. The matter must be subject to arbitration.

ii. The parties' consent must not have been given through error, fraud, or under duress.

iii. The parties had full capacity or authority to sign the agreement.

Mexican courts generally enforce arbitration agreements. There is a recent trend to recognize arbitration agreements due to the constitutional recognition of alternative dispute resolutions.

Arbitration award

Under the Mexican Commercial Code, the award must be in writing and signed by the arbitrators, indicating the seat of the arbitration and the date on which it was signed. If more than one arbitrator issues the award, only the signatures of the majority are necessary, but reasons must be given as to why some of the arbitrators did not sign the award (if applicable). Unless the parties have agreed otherwise or settled their disputes, the award must also contain the reasons for the decisions.

The award is final and binding. Unless the parties have agreed otherwise, the award cannot be subject to an appeal on the merits. In practice, parties rarely agree that the award may be subject to an appeal before judicial courts.

Recognition and enforcement of arbitration awards

First instance courts (local or federal) have jurisdiction over an application for the recognition and enforcement of an arbitral award. The requesting party must present to the court (i) the original arbitration agreement or a certified copy of it; (ii) the original award authenticated or a certified copy of it; and (iii) a certified translation of the documents that are not in Spanish. The recognition and enforcement proceedings are adversarial, and both parties have the opportunity

to present arguments and file evidence. The opposing party has the burden to prove why the award is not recognizable and enforceable, except in cases that require ex officio analysis by the court.

Regarding international treaties that facilitate the recognition and enforcement of arbitral awards, Mexico is a party to (i) the New York Convention of 1958, ratified in 1971, and has made no declarations or reservations regarding its enforceability; (ii) the Inter-American Convention on International Commercial Arbitration (Panama Convention), ratified in 1977; (iii) the Inter-American Convention of Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention), ratified in 1987; and (iv) the Convention on the Settlement of Investment Disputes between States and Nations of Other States (ICSIS Convention), which entered into force in 2018.

Setting aside an arbitration award

Awards can be set aside by a local or federal court only in the following limited cases, which the requesting party must prove: (i) one of the parties to the arbitration agreement was not legally capable; (ii) the arbitral agreement was not valid under the law to which the parties have subjected it or, in the absence of an agreement, the arbitral agreement is not valid under Mexican law; (iii) the party was not given proper notice of the appointment of an arbitrator or the arbitral proceedings, or was unable to enforce its rights for any reason; (iv) the award deals with issues not included or falling outside the scope of the arbitration agreements; (v) the arbitral tribunal or the arbitral procedure was not constituted in accordance with the agreement of the parties; (vi) the subject matter of the procedure was not arbitral; or (vii) the award breaches public policy.

A court's judgment in a setting aside procedure cannot be appealed. The award may be challenged through an *amparo* appeal in federal courts.

Mediation

As an alternative dispute resolution mechanism, mediation has also increased in popularity over the past decade, but it is still minimal compared to arbitration. In large and complex commercial contracts, including multi-tiered clauses before advancing a claim is common.

Parties may agree to non-institutional mediation without written consent. However, according to some state alternative dispute resolution laws, institutional mediation must be agreed in writing.

Mexican courts are obliged to recommend parties to mediate their dispute, and any agreement reached through a mediation process before a court is binding as a final judgment, and it may be executed through a summary process. However, the mediation process is still voluntary under Mexican law.

11.3. Investment arbitration

Investment protection has become important in Mexico.

Mexico has entered into 46 free trade agreements to open to the free market. These agreements usually contain a bilateral or multilateral investment protection regime. Some bilateral or multilateral agreements overlap, so there is a favorable regime for investors depending on the country where the investment is from. For example, Canadian investors in Mexico are protected by the United States-Mexico-Canada Agreement ("USMCA") and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP").

Although it depends on the definition of each treaty, foreign investment protection covers a wide range of interests and operations, such as assets, concessions, contracts, project development, project financing, and acquisition of companies or guarantees. The type of substantive protections Mexico generally grants in its investment treaties include protection against direct expropriation or measures tantamount to expropriation, minimum standard of treatment, non-discrimination, and most favored nation.

In 2018, Mexico also ratified the ICSID Convention, which mainly regulates the operation, the jurisdiction of the ICSID, and procedural rules in conciliation and arbitration

Mexico has entered into several free trade agreements that usually contain a bilateral or multilateral investment protection regime.

proceedings administered by the ICSID. The ICSID is the institution that administers most cases of disputes between states and nationals of other states, and it has been recognized for this role for some time.

Concerning multilateral treaties, Mexico renewed its free-trade relationship with the United States and Canada through the USMCA. Signed in 2018 and in force since July 2020, the USMCA replaces the North American Free Trade Agreement ("NAFTA"). The USMCA has renewed and updated the rules for the investment flow in North America, one of the most dynamic economic regions in the world. Nationals of the three countries who invested during the term of NAFTA and those who followed when the USMCA entered into force will continue to be protected by NAFTA for up to three years after it is terminated. This guarantees a broad protection of the investments made, considering the limitations of the USMCA compared to NAFTA.

Mexico is also negotiating a free trade agreement with the European Union that will include an article on protecting investments. Therefore, bilateral treaties signed between Mexico and various European countries, such as Germany, Spain, France, and Switzerland, are expected to continue to apply in the short term.

Mexico is part of the CPTPP, which involves a new multilateral investment regime with nations in Asia, Oceania, and South America. Mexico continues to ratify its state policy of openness to free trade with other regions so that it can strengthen its position in the world and encourage investments in the Mexican state.

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