GOODRICH´S

BLUE BOOK

MEXICO

5th EDITION

GOODRICH RIQUELME ASOCIADOS

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RIQUELME
ASOCIADOS

CONTENTS

The Mexican Economy at a Glance

We believe Mexico will be one of the most positive stories within emerging markets in 2016. Our central scenario is that real GDP growth will continue to accelerate in a context of still subdued inflation. We project a narrowing of the fiscal imbalances and believe appetite for new debt issuance in Mexico and abroad will remain. The current account could widen somewhat as a percentage of GDP, but net FDI flows will likely be enough to finance roughly one-half of the external gap. We have no hopes for a new reform agenda, but we believe investor excitement will center on the guessing game associated with the outlook for monetary policy.

External risks to our central scenario are related to the health of the US economy and to oil prices. Weaker-than-expected US growth, particularly on the import front, would likely translate into slower growth in Mexico. The upside from this scenario would likely be a lesser need for the US Federal Reserve to normalize monetary policy in an aggressive way, which would be positive for risky assets, including Mexico's, if the economic slowdown is not too pronounced. Meanwhile, much lower oil prices in 2016 would likely affect sentiment toward Mexico if state-owned Pemex continues to delay payments to suppliers and service providers beyond the promised payment date in May. Growth expectations for 2017 and beyond would also be affected in anticipation of potential additional budget adjustments, consistent with the government's policy response in 2015-16. Fortunately, the fiscal program for 2016 has locked-in an average price for Mexico's crude oil export mix of $50 per barrel versus the current $22.7, which lowers the risk of additional spending cutbacks in the next 12 months.

Internal risks seem to be associated with crime, corruption, and the outcome of upcoming oil field auctions. In our view, part of the slump in business and consumer confidence in recent quarters, as well as the slide in the government's popularity, was associated to specific crime and corruption cases in the past two years. In this sense, the emergence of new cases of corruption or of high-profile crimes would likely present challenges to the ongoing recovery and to Mexico's overall reputation. Meanwhile, the fourth oil field auction to take place in late 2016 for deepwater exploration should also act as a barometer of investor appetite in the newly opened energy sector, especially since it should have a more significant impact in terms of investment and production compared to the previous auctions.

We project average real GDP growth to accelerate in 2016 to 3.0% from 2.5% in 2015. Our forecasts are slightly above market expectations in the latest central bank survey of 2.45% for 2015 and 2.74% for 2016. From the supply side, we note that real GDP growth would have been about 0.5 percentage points higher year to date had it not been for the drop in oil output. From a demand perspective, the sum of the GDP components also yields a much higher growth figure for the past year (4.3% versus the actual 2.4%), but this is most likely due to measurement errors on inventories accumulation.

Recent high-frequency economic indicators have been mixed. The bright spot continues to be the strength in private consumption, growing near 3.0% in real terms. Manufacturing exports have remained sluggish, despite the depreciation of the peso, and likely reflecting subdued US import

demand. Finally, investment growth has been somewhat erratic, as sluggish construction growth has offset the strength in imports of machinery and equipment.

We remain optimistic on the inflation front, despite the persistent weakening pressures on the peso. For 2016 we anticipate inflation to fluctuate around the central bank's target of 3.0% for most of the year, starting in January, as a favorable base effect dissipates and as increased pass-through from peso weakness materializes. At present, we foresee a year-end inflation rate of 2.9%.

There are risks of higher and lower inflation for next year. The main risks of higher inflation are a greater degree of pass-through from currency weakness and a spike in agricultural prices, given current agricultural inflation appears to be too low at present. Meanwhile, risks of lower inflation are associated to an intensification in competition in certain industries, most notably telecommunications, airlines and retailers. Also, by the third quarter of 2016 inflation uncertainty will likely increase notably upon the expected launching of the new consumer price index, with a new base year, weights, additional cities and a re-classification of certain items.

We maintain our forecast that the central bank will likely increase the overnight rate by 75bps to 4.00%, consistent with our house view regarding the path that the US Federal Funds rate will likely follow. We believe the central bank of Mexico would be more likely to break its links with the Fed if Fed hikes are fewer than expected and with a longer lag, provided that inflation in Mexico is in check. The alternative scenario—one in which the Fed is tightening more aggressively than expected—would probably result in comparable rate increases by the central bank of Mexico, given the adverse impact that this context would likely entail for the Mexican peso and emerging markets in general.

Our house view is that the Mexican peso will weaken to 18.20 pesos per dollar in 12 months. We believe the risks to this call are clearly biased to the stronger side, i.e., that the peso is stronger than 18.20 one year from now. While we understand the arguments behind the strong dollar thesis, we note that Mexico stands to benefit from a stronger US economy, that most of the oil price decline is probably behind us, and that the Mexican authorities stand ready to defend the currency via additional dollar sales and/or interest rate increases.

On the fiscal front, we commend the authorities for their tightening efforts, treating the oil price shock as a permanent one. We project that the broad fiscal deficit will fall to 3.2% of GDP in 2016 from a deficit of approximately 3.5% of GDP in 2015, while the primary deficit will narrow to 0.6% of GDP from a deficit of 1.3% of GDP in 2015. Meanwhile, on the external accounts, we foresee a widening of the current account deficit towards 3.5% of GDP in 2016 from a deficit of 2.8% of GDP in 2015, mainly reflecting stronger domestic demand. We estimate that net FDI flows will finance approximately 50% of next year's deficit.

We think that the political outlook will be largely uneventful in 2016. We do not believe major reform bills will be presented to congress and expect the

main political parties to be focused on the gubernatorial elections scheduled for early June. In our view, it will not be until mid- to late 2017 when investors, particularly abroad, will be more watchful of political developments, with an eye on the 2018 presidential elections, which will likely be competitive, given the fragmentation of Mexico's political system, the emergence of independent candidates and the lack of a run-off vote.

Lastly, we do not expect any changes in Mexico's long-term foreign-currency sovereign debt ratings in 2016. Currently the main three rating agencies rate Mexico's long-term foreign-currency debt at BBB+ with a stable outlook. Our view of no changes in the ratings is based on our central scenario that major shocks or surprises, positive or negative, are unlikely to materialize, and that if negative ones were to happen, there would be an adequate policy response to address them.

Alonso Cervera
Managing Director, Emerging Markets Economics Research, Credit Suisse

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About the 5th Edition

We are delighted to present the 5th edition of our *Blue Book*. As recognized by numerous investment and trade organizations, for over 20 years the book has proven to be useful for the senior management of corporations based in over 25 jurisdictions. We trust that our contribution continues to serve the *soft-landing* of the global business community.

As suggested by our readers, we have kept a user-friendly approach, which includes introductions, key points, common questions & answers, as well as applied diagrams. A new section regarding our relevant experience in each practice area has also been included.

Furthermore, the book has been designed from a cross-wide perspective which covers both, general legal themes, as well as specific regulated markets.

As compared to previous editions, our 5th delivery portraits a far-reaching reform of the Mexican legal system, which is only comparable to the one that the country experienced in the context of NAFTA, during the nineties. As explored in the firm's *Mexico. Investment Profile. Towards 2018,* the structural reforms enacted during the first two years of the current federal administration encompassed a revitalization of various areas of law, including those covering Banking & Finance, Telecommunications, Energy and Education, amongst others.

As always, the book is a collective effort of talented and enthusiastic associates and partners of all areas. Additionally, we have been most honoured to count with the forward by Credit Suisse. The firm is most thankful for the efforts of all participants.

With the 5th edition of the *Blue Book*, Goodrich continues to demonstrate its long-term vision and commitment with its clientele and with the country.

Mexico City | February, 2016.

Goodrich, Riquelme y Asociados

CORPORATE LAW

Foreign and national investors can establish presence in Mexico adopting greater dynamism and flexibility, through different corporate structures...

GOODRICH
RIQUELME
ASOCIADOS

01
Introduction

Mexico demonstrates its place in this globalized world in the way it conducts business, by adopting greater dynamism and more flexibility for the benefit of both national and international investors. Investment projects in our country include opportunities for development, either directly, through the incorporation of companies or by the acquisition of existing businesses under different legal strategies; or indirectly, through the execution of trade agreements with distributors, brokers, agents or representatives in Mexico.

Furthermore, this dynamism has also had an impact on existing companies through corporate restructuring, legal formation of these entities through mergers, spin-offs, stock transfers, or changes to corporate control at different levels. Finally, this mobility allows for the winding up of projects, culminating in the dissolution of companies, and their subsequent liquidation.

The flow of trade has allowed an interconnection between the private and the public sectors to grow, and this has taken shape through the passage of Mexican legislation that promotes Public-Private Partnerships (PPP's).

When foreign investors initiate operations in Mexico, they will find, as a rule, a largely open investment market, with the exception of: (i) activities reserved to the State, (ii) activities reserved for domestic investors (to Mexicans or Mexican companies with a foreigner exclusion clause) and, (iii) activities subject to specific percentages of participation, with limitations of to 10%, 25% or up to 49%, as applicable. Investments in these areas are also subject to express approval by the State.

02

Key Points

- Presently, in order to best address and benefit the specific needs of the investor, either for the purposes of flexibility or efficiency, the preferred business models, which are established by the General Law on Commercial Companies, are the Corporation and Limited Liability Company. Based on which benefits are sought by the investor, an investor will find one of these two models most convenient.

- Namely, in the case of a corporation, the share representing the capital stock provide for the possibility of entry and exit of third party investors, and determines both their economic and corporate rights. There is no limit to the number of shareholders and the minimum capital need for its incorporation.

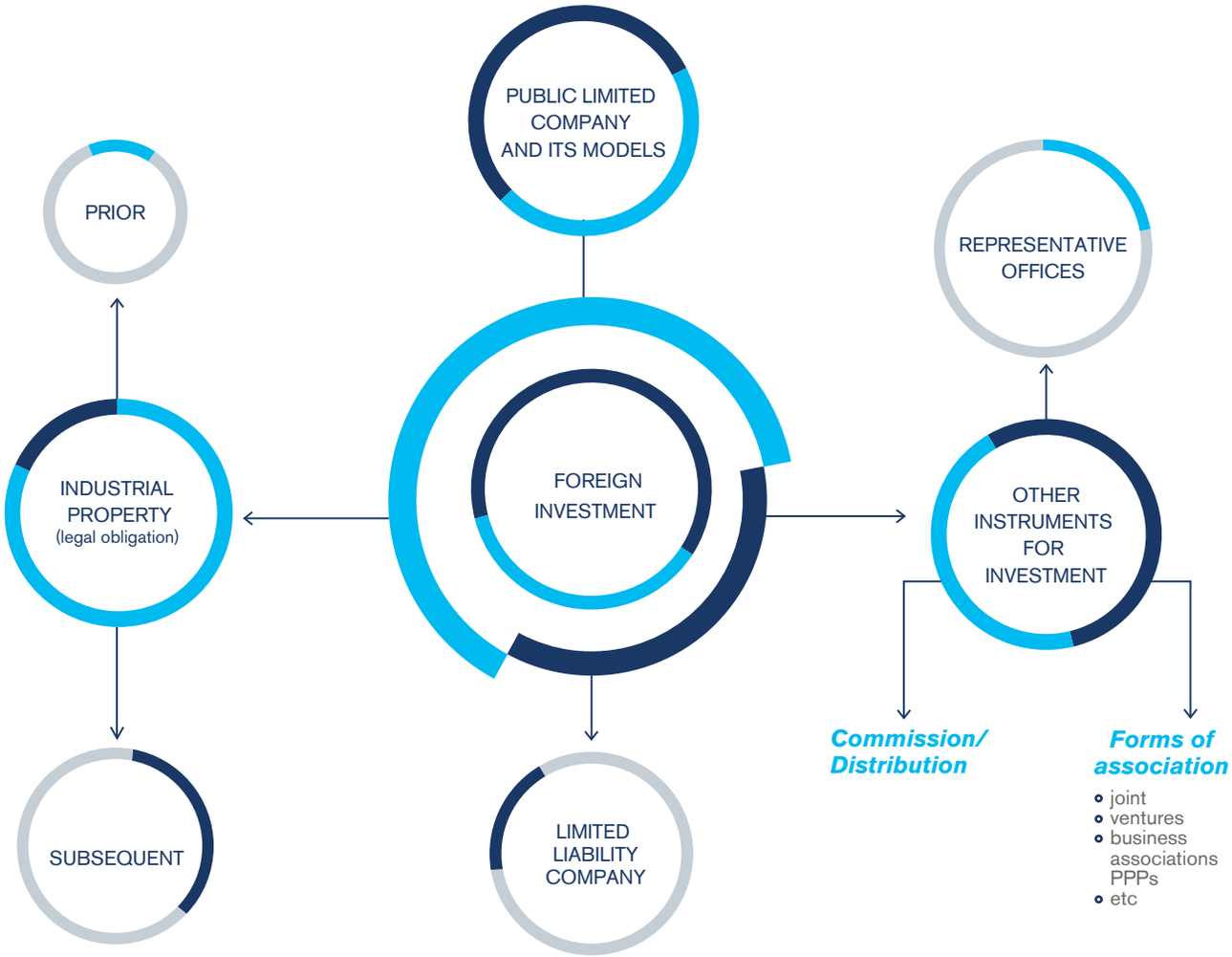
- A business model exists that is even more flexible than the framework of a Corporation, and this option includes the possibility of operating as an Investment Promotion Corporation. This type of company represents the first step for capital management presented to the general investing public for the purpose of attracting funds and financing stemming from private capital.

- Notwithstanding the aforementioned, our current legal framework with respect to corporate matters allows for the opportunity to execute agreements that establish conditions and restrictions on shareholders for the purpose of limiting or facilitating the flow of shares.

- The regulation of limited liability companies, by their very nature, involves more restrictions because these companies seek greater cohesion amongst their members, being that the parties representing their capital are not negotiable and their management allows for the fluidity of shares.

- It is also possible that investors operate in the country through local representative offices, so long as they meet the requirements established by the respective authorities.

- Aside from the instruments provide for in our corporate legislation, other means for investment include: distribution contracts, commissions and franchising, joint ventures, and profit-sharing agreements, public-private partnerships, and studies and tests for establishing the legitimacy of the activities of our clients.


PUBLIC LIMITED COMPANY AND ITS MODELS
PRIOR
REPRESENTATIVE OFFICES
INDUSTRIAL PROPERTY (legal obligation)
FOREIGN INVESTMENT
OTHER INSTRUMENTS FOR INVESTMENT
SUBSEQUENT
LIMITED LIABILITY COMPANY
Commission/ Distribution
Forms of association
joint
ventures
business associations
PPPs
etc

03

Recent Practice Experience

Through our corporate law practice, our firm has participated in various types of incorporations of companies involving foreign capital, ensuring that each project is as unique as the individuals and companies.

For example, now that corporate law expressly allows for incorporation under a more flexible framework, with certain obligations regarding the capital of companies, our firm has the opportunity to work in drafting shareholder agreements in straightforward models such as S.A.s (Sociedad Anomina). In doing so, we pave the way for the improvement of corporate governance of companies and strengthening the legal and economic security of shareholders both inside and outside of the company.

We have also participated in corporate restructurings, and with respect to these restructurings have carried out transactions to ensure subsequent operations for the disposal of assets, company shares/parties, mergers, divestment, issuance of securities, and assessment of potential risks and contingencies.

Because of the wide breadth encompassed by corporate law, we have participated in related proceedings, in the form of proceedings before the Economic Competition Commission. Our firm has defend companies that have begun conducting research for the purpose of investigating and identifying possible monopolistic practices, and by planning and preparing studies and tests to establish the legitimacy of the activities of our clients.

04

Frequently Asked Questions

1. What is required for the incorporation of a company? In short, it requires:

- A permit for the use of a company name.
- Powers of representation at the time of incorporation.
- Determination of the business purpose, registered company address, duration, capital and its classification, as well as the form of the company's representative and oversight bodies.
- The possibility of entering into a Shareholders' Agreement.
- Integration of these records for compliance with the Federal Law for
- Prevention and Identification of Operations of Illicit Origin.

2. What is recommended to verify the legal status of a "target" company?

It is recommended that a legal audit or due diligence be conducted for the purpose of determining the legal status of a company. This allows an interested party to precisely determine compliance or non-compliance of a target company's corporate obligations with respect to the relevant authorities.

3. What is the typical length of time for the incorporation of a company?

When the necessary paperwork is already in order, incorporation of a company takes approximately 2 to 3 weeks.

4. What obligations exist within a company with respect to the authorities after its incorporation?

- Registration of the corporation in the Federal Registry of Taxpayers.
- The holding of an Annual General Meeting of Shareholders.
- If there is foreign capital invested in the company, it must register with the
- National Registry for Foreign Investment, meet the established economic thresholds, and submit annual and/or quarterly financial reports, as applicable.
- If there are shareholders residing in a foreign country that are not registered with the Federal Registry of Taxpayers, an account of the existence of these shareholders, along with the relevant information, shall be filed with the Tax Administration Service.

5. Is it necessary for anyone who is a member of the administrative body of the company to be a Mexican citizen or reside in Mexico?

No, it is required that board members or managers have Mexican citizenship. Nor it is required that they be domiciled in Mexico. However, those individuals who are directors or officers who are responsible for fulfilling obligations and exercising powers in Mexico are required to have the necessary permits which are issued by the immigration authorities in Mexico.

LITIGATION AND DISPUTE RESOLUTION

"The Mexican justice system recognizes different resolution mechanisms both, traditional and alternative..."

GOODRICH
RIQUELME
ASOCIADOS

01

Introduction

The Mexican legal system recognizes, for the benefit of society, that there must be effective access to the jurisdiction of the State, which is entrusted and mandated to the federal and/or local courts for the administration of justice.

In furtherance of this, the State has established the right to due process so that every person has access to independent and impartial courts in order to bring a claim or to defend oneself against such claims. This occurs through a process which is judicial in nature and which must necessarily include those formalities that are considered essential to such a process.

In addition to ensuring access to the courts and to judicial due process, the Constitution of the United Mexican States mandates that the laws provide for alternative dispute resolution mechanisms which allow for the possibility of recourse to additional procedures for the settlement of disputes without the traditional intervention of a judicial authority, and which consolidates the Mexican Justice System by recognizing different approaches (traditional and alternative).

In furtherance of this, the Commercial Code was reformed in 1993 to include all modern, comprehensive, and coherent legislation on arbitration, under the title of "Commercial Arbitration." This reform incorporates the UNCITRAL Model Law in full, with modifications and adaptations deemed necessary to serve the needs of average Mexicans.

Moreover, Mexico is a party to various arbitration treaties: the Convention on the Recognition of Foreign Arbitral Awards, adopted in New York in 1958 International (the "New York Convention"); the Inter-American Convention on Commercial Arbitration of 1975 (the "Panama Convention"); and the Inter American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.

Additionally, because of expanding avenues of access to justice and dispute resolution through non-contentious and alternative methods of judicial processes, our system regulates mediation in various civil, commercial fields. For example, the Hydrocarbons Law establishes that assignees or contractors may request that the Ministry of Agricultural, Land and Urban Development conduct a mediation proceedings which focuses on forms or strategies of acquisition, use, enjoyment, and impact on land, property or rights, as well as the appropriate compensation the sale and purchase of such rights or property.

02

Key Points

- Both the application of foreign law by Mexican judges, as well as the recognition, validity, and enforcement of foreign judgments and awards that may have an impact in Mexico are permissible, provided they meet the requirements established by law for this purpose.

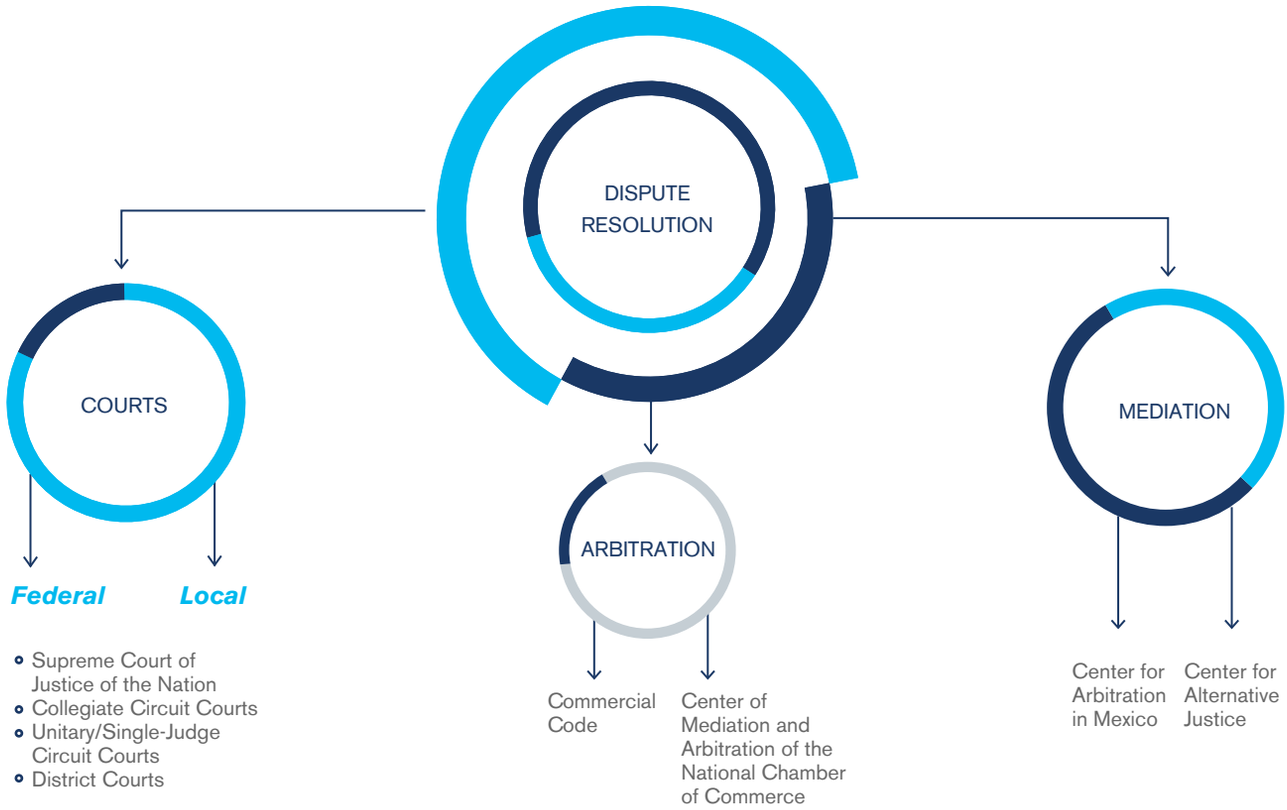
- On September 2009 and January 2011, several amendments were made to the Code of Civil Procedure for the Federal District and the Commercial Code; among the most important of those amendments were the inclusion in each legal code of a Special Title that establishes, respectively, Oral Proceedings in Civil Matters and Oral Proceedings in Commercial Matters. This represented a substantial change in the administration and enforcement of justice. The aim of these reforms involved searching for new forms and mechanisms for the administration of justice for the purpose of providing quick and timely responses to the public's demand for access to justice.

- Most of the State Courts of Justice, including the one corresponding to Mexico City, have created Centers for Alternative Justice to manage and develop alternative methods of dispute resolution between parties.

- The agreements signed as a result of the mediation proceedings, as provided for in the Alternative Justice Act of the High Court of the Federal District, are viewed as final judgments. As such, if one of the parties fails, the agreement may be executed directly before a Circuit Court without the need of going through an entire judicial proceeding.

- For judgments adjudicated abroad, and that are to be recognized and executed in Mexico, the Commercial Code states that their approval is not required, for these purposes it is sufficient to initiate a special proceeding as established under Chapter X of Title IV referred to as "Commercial Arbitration."

- The Supreme Court of Justice of the Nation has elevated the category of human rights, allowing parties in these types of matters to have access to Alternative Dispute Resolution Mechanisms.


DISPUTE RESOLUTION
COURTS
Federal
Local
Supreme Court of Justice of the Nation
Collegiate Circuit Courts
Unitary/Single-Judge Circuit Courts
District Courts
ARBITRATION
Commercial Code
Center of Mediation and Arbitration of the National Chamber of Commerce
MEDIATION
Center for Arbitration in Mexico
Center for Alternative Justice

03

Recent Practice Experience

Our firm has significant experience and involvement in Alternative Dispute Resolution proceedings. Because of being a relatively new procedural mechanism, special mention must be given to a dispute that arose between a company, herein called "Printer," and another company, herein called "Financial," that resulted from a financing contract. At that time, the dispute was resolved by engaging a mediator in accordance with the provisions of the Law on Alternative Justice for the High Court of the Federal District.

"Financial" approved a line of credit for "Printer" to acquire ownership of a press for printing and design. However, "Printer" only made payments towards the loan in a limited amount within the time allowed for compliance with its payment obligation.

In order to resolve the controversy over the non-payment of the full amount on the line of credit, and before exhausting all judicial recourses, the parties agreed to settle the dispute in question through the intervention of a mediator assigned by the Center for Alternative Justice of the High Court of the Federal District.

After a number of negotiations, the parties reached an agreement based upon reasonable mediation in accordance with their interests, which was then formalized by the mediator and accordingly a final judgment was entered.

To ensure compliance with the payment obligations assumed by "Printer" as a result of the mediation agreement referred to in the preceding paragraph, the parties agreed that the press for printing and design which was the foundation of the sale, was offered as a security, with the reason being that if a breach of the obligation in question materialized, that press would be returned voluntarily or through the execution of an order of possession to "Financial."

Due to a breach by "Printer" with respect to the new agreement, the press was removed from the premises by the judicial execution of the agreement without the need for additional legal proceedings. We were able to achieve the objective sought and accepted by our client in the mediation agreement, which addressed consequences and resolutions in the event that "Printer" once again breached its payment obligations.

04

Frequently Asked Questions

1. How long does a trial in Mexico an ordinarily last?

Approximately two years, including the amparo proceeding, which is a proceeding in which violations of rights guaranteed by the Federal Constitution are challenged. These deadlines depend greatly, however, on the complexity of the matter and the workload of the courts.

2. Can a judgment issued abroad in connection with the execution of a mortgage constituted on a property that is located in Mexico be recognized and enforced in Mexico?

No, in accordance with the applicable provisions of Mexican law, judgments issued abroad as a result of a real property action (relating to certain types of real property or personal property actions) cannot be executed and enforced in Mexico.

3. In the event that the parties have submitted to arbitration to settle a dispute is it possible to request interim measures?

Yes, you can petition the presiding or appropriate judge to adopt interim measures (akin to an injunction), for example, a party can (i) request a temporary seizure of assets when there is fear that may be hidden or lost, whether it be real or personal property; and (ii) petition that a third party refrain from making payments of any amount to the defendant institution - like a bank, for example – and ask that the bank account be frozen, or request that a company that is required to make a credit payment to a defendant refrain from making such payments, and request that if such party proceeds to make such payment that a penalty of a double payment be imposed as a result of noncompliance with the judicial order.

4. Can a Mexican judge apply foreign law to hear and decide a trial?

Yes, foreign law applies in the same way it would if the judges would apply the applicable law of the jurisdiction where the proceeding is taking place, and, as such, the proceeding should avail itself of all the elements necessary for its application.

5. In accordance with Mexican law, what happens when a matter is under the jurisdiction of a Mexican judge when the parties have expressly agreed to the jurisdiction of the courts abroad?

In principle, the Mexican judge lacks subject-matter jurisdiction. In the event that a determination is made that the Mexican judge has subject-matter jurisdiction over the matter, the defendant must exercise their rights via an exception. If the defendant does not exercise this right, the law considers that the defendant tacitly submitted to jurisdiction of the Mexican court, and the judge shall proceed with the trial without the availability of a subsequent pleading for lack of subject-matter jurisdiction.


GOODRICH'S
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MEXICO

INTELLECTUAL PROPERTY AND REGULATORY LAW (SANITARY)

“… the fact is that everyone wants their product or service to be positioned for the market…”

GOODRICH
RIQUELME
ASOCIADOS

01

Introduction

Intellectual property today is a significant asset for any company, given the importance of protecting the foundations of intellectual property. Viewed from a business perspective, the fact is that everyone wants their product or service to be positioned for the consuming public and consumer market, while also enjoying the rights associated with and available to such products or services, such as trademarks, patents, industrial designs, utility models, commercials, construction projects, sanitary registrations, domain names, and personal data protection.

Indeed, intellectual property rights and laws and sanitary regulations are intended to promote industrial activity and encourage creativity that foments the design of new products or services.

Therefore the intention of our firm is to provide comprehensive strategies that address the needs of our clients in different areas of the industry through the utilization of various mechanisms, including patents, registration of utility models, industrial designs, trademarks, and commercials/advertisements, publication of trade names, declarations of designation of origin, and the licensing thereof, as well as health registrations, while also addressing claims that protect these rights against infringement, invalidation, and revocation of any of these mechanisms.

In Mexico, the appropriate jurisdictional authority is the Mexican Institute of Industrial Property (IMPI) and its main purpose is to encourage technological development for the benefit of society. With respect to copyright, the appropriate jurisdictional authority is the National Institute of Copyright (INDAUTOR). Finally, with respect to sanitary regulations, the appropriate corresponding authority is the Federal Commission for the Protection against Sanitary Risk (COFEPRIS).

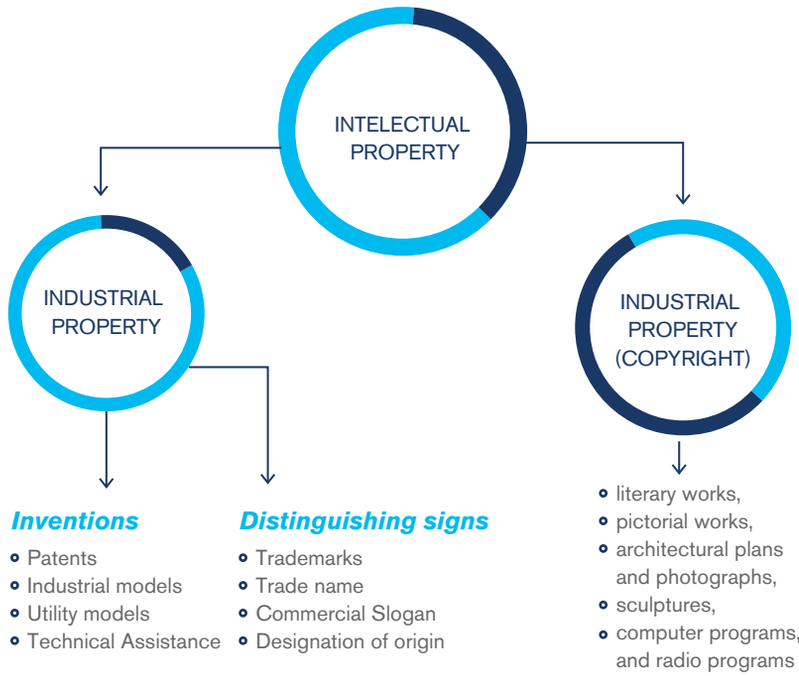
02

Key Points

- Intellectual property is a completely technical matter, which requires a command of different, yet interrelated, domestic and international laws.
- A trademark is any visible sign that distinguishes products or services from others of their kind that are on the market.
- Commercials/advertisements consist of phrases or sentences broadcasting to the public the existence of establishments or commercial negotiations, for industries, goods, or services, for the purpose of distinguishing them from others of their kind.
- A trademark is valid for a term of 10 years, and can be renewed for similar periods.
- A trademark is vulnerable to cancellation for non-use for a term of three consecutive years (abandonment). For that reason, the trademark holder must make use of the mark; otherwise, it can be difficult to defend its validity and consequence may be the loss of the right of exclusive use.
- In Mexico, a multiclass trademark registration system does not exist, as in other countries, this is to say that a trademark must be registered in one particular class, according to its type or nature, and the trademark should be registered in all classes where that trademark is intended to be identified with a particular product or service.
- A patent is available for an invention, which requires innovation, i.e., an inventive step with the capacity for industrial application.
- Industrial designs include: (i) industrial designs, which are any combination of shapes, lines or colors incorporated into an industrial product for decorative or ornamental purposes and which give it a specific and unique appearance; and (ii) industrial models, consisting of any three-dimensional shape that serves as a model or pattern for the manufacture of an industrial product and that gives it a special appearance as long as it does not imply technical effects.
- A commercial name is a protection that grants coverage over the geographical area where there are actual clients or customers of the company or establishment are located, and where the commercial name is applied and which may extend to the entire Republic if is widely and consistently publicized at the national level. This applies only to commercial establishments.
- Licensing refers to an agreement authorizing one or more persons to use all or some of the goods or services for which a trademark applies. The license must be registered with the IMPI in order to be binding upon third parties.
- Copyright refers to any rights arising from an original creation, which is capable of being released or reproduced in any form or medium. Copyright is a recognition granted by the State and available to all creators of literary and artistic works. It is through copyright that an author's enjoyment of prerogatives and privileges of personal and economic character are granted protection.

- A domain name represents an identifier common to a group of computers or networked computers. It is a simple form Internet address designed to allow users to easily locate websites. Today, abusive registration of domain names occurs (“cybersquatting”), and for that reason there is an existing policy that allows for the recovery of a .mx domain name.

- From 2012, the Industrial Property Law was reformed which has facilitated the ability of individuals or entities to proceed with an application for trademark registration.



03

Recent Practice Experience

Currently one of the most common conflicts within the pharmaceutical industry is related to disputes between a sanitary registration and a patent, due to the absence of a system which coordinates and links this information.

On the one hand a patent is available to an invention, which must be novel, involve an inventive step, and has the capacity for industrial application, except: (i) essentially biological processes for the production, reproduction, and propagation of plants and animals; (ii) biological and genetic material as found in nature; (iii) animal breeds; (iv) the human body and the living matter constituting it; and (v) plant varieties.

On the other hand, a sanitary registration is an authorization to market a drug that complies with specific requirements that ensure that the drug poses no serious health risks.

The conflict arises as a result of the absence of a link between the relevant authorities because on one side there is a patent holder and on the other side, a third party that intends to market a certain drug (product patent). The fact that two autonomous, unrelated authorities converge, and considering the scope of power of each authority, on occasion this causes an infringement of rights by virtue of the mere acceptance of the application for licensing or the initiation of an administrative proceeding by the IMPI.

Furthermore, we point out the federal government's strategy carried out through COFEPRIS, which consists of its authorization to release molecules, for the purpose of making public health more accessible. This strategy has led to the admission of sanitary registration applications that do not meet the deadline for admission, and do not necessarily have the proper technical support from the IMPI regarding the infringement on a patent. Indeed, under the provisions of the law, a party may file an application for licensing three years before the term of a patent expires. However, considering the absence of a linking mechanism, the fact is that errors occur on the part of the authorities that at times allow for and cause the infringement of rights in both cases.

Upon the acceptance of an application for licensing, COFEPRIS is required to request a technical report wherein IMPI determines whether any patent relating to the substance exists, and the status of the patent should one exist.

However, it must be emphasized that the absence of a mechanism linking these types of records at times leads to circumstances where authorities allow an infringement of rights, and as a result, a need arises to take different legal actions to defend the rights of either the patent holder or sanitary registration holder.

04

Frequently Asked Questions

1. What are the requirements for registering a trademark?

A party must file an application with the IMPI which contains the following information: name; nationality and address of the applicant; the distinctive sign of the trademark; the date of first use of the trademark; products or services to which the trademark shall be applied; and any other requirements necessary for compliance with the regulations established in the Industrial Property Law.

2. What kinds of trademarks exist?

Registered, unnamed, mixed and three-dimensional. Trademarks can be a word or combination of words, letters, and numbers. They may also consist of drawings, symbols, and three-dimensional features such as shapes and the packaging of products.

3. What is the term of a trademark?

The trademarks are valid for a term of 10 years and are renewable for equal terms.

4. Must a license be registered with a specific authority for it to take effect?

Yes, provided there is a trademark or patent license, the license must be in writing and must be registered with the IMPI to have effects against third parties.

5. What obligations does the owner of a trademark have?

A trademark owner is obligated to use their trademark in the manner for which it was granted. If a trademarks is not used for 3 consecutive years, a third party may request the revocation of a trademark for non-use (abandonment).

SECURED TRANSACTIONS

"... secured transaction that best meet the needs of the lenders and borrowers under a financing procedure..."

GOODRICH
RIQUELME
ASOCIADOS

01

Introduction

Normally, businesses require funding for initial startup, operation, and growth in order to achieve their objectives. Therefore, it is important to be aware of the various types of secured transactions that are currently available in Mexico in order to choose which type can be granted, and which types of transactions best meet the needs of the lender who is offering financing and the borrower who is receiving financing.

As a result, such as the economic capacity and credit references of the borrower, the loan amount, as well as the particular characteristics of each project, repayment schedule for full payment of the debt obligation, and other characteristics.

Our legislation provides several ways to secure the payment of obligations and how to enforce these transactions, and describes some of the most common.

When discussing commercial trade in goods and in services rendered in Mexico between domestic and foreign companies, we must not overlook that it is also of great importance to ensure compliance with obligations arising not only from financing arrangements, but those also arising through contract between parties, e.g., buyer-seller, that in general tend to utilize personal guarantees, although in certain cases collateral is used as a security interest, depending on the type of contractual or legal obligation to be guaranteed.

02

Key Points

In Mexico, two types of guarantees exist: security interests/collateral that encumber assets and personal guarantees that encumber an individual or company, as applicable.

A. Real Guarantees

Pledge. This constitutes a security interest upon personal property or rights that are offered as a security to lender which guarantees the obligations assumed by the titleholder of the goods or by a third party.

Pledges without transfer of possession to the lender also exist. In these situations, the lender is granted a security interest over assets such as the accounts receivable of a business, inventory, or even upon the entire assets of an individual or company.

Mortgages. This constitutes a security interest upon property, generally in real property, without delivery or transfer of possession to the lender, and grants the lender the right to retain property in the event of breach through the execution of a collection process upon the mortgaged property until the payment of the secured obligation has been discharged.

This is granted through a public deed, which shall be duly registered. Special mortgages for industrial, maritime, and aeronautic property also exist.

B. Personal Guarantees

In addition to the most common types of personal guarantees such as promissory notes, surety, joint obligor, and letter of credit, the following personal guarantees also exist under Mexican law:

Bond. A contract that is ancillary to a principal agreement in which an individual or company makes an agreement with a creditor to pay the debt of a borrower in the event of non-payment by the borrower.

A specific type of bond exists that is known as a corporate bond, which can only be made companies that are incorporated as bonding companies and that are approved by the relevant regulatory authority. These arrangements are governed by a special set of laws.

This type of guarantee generally secures obligations arising from private works contracts or public procurement bids, in which there may be work advances, retainers, hidden defects, etc.

Surety Bond. With the use of a surety bond, an insurance company or surety assumes the obligation of the policyholder to indemnify a third party (the insured) within the limits of the insurance policy for property damage that may be suffer by the insured/obligee, and to cover any circumstances agreed to under the insurance policy and related to a breach by the policyholder of that party's legal or contractual obligations, and the policyholder must also repay the insurer for any amount that is paid to the insured.

The contract is documented through the issuance of an insurance policy and a certificate of insurance issued to the insured. Unlike a corporate bond, a surety bond can be modified to the specific types of circumstances, relating to any breach of obligations by the policyholder, which must be verified so that the insurer can pay compensation to the insured. This verification can occur through the presentation of a simple written claim made by the insured or, in certain cases, must be established by a judgment for breach.

The only obligations that cannot be guaranteed by this type of insurance are those that are financial in nature (loans and credits).

Trust. A contract involving a Trust Institution (usually a financial institution) in which a debtor conveys assets for the purpose of using these assets to guarantee any obligations assumed by its creditor. The trustee retains and manages theses pledged assets as a security interest, and shall pay the creditor in the event of breach by the debtor.

Trusts must necessarily be constituted by public deed, and generally their wording is complex. As a result, this type of guarantee is recommended in cases involving major transactions whose execution is expected over the long term.

OBTAINING RESOURCES THROUGH A FINANCING AGREEMENT WITH:	ASSETS THAT CAN BE OFFERED AS GUARANTEES:	DECIDING ON A TYPE OF GUARANTEE
° Economy capacity ° Credit references ° Financing amount ° Payment structure ° Terms, etc	° Personal Property ° Real Property	° Real Guarantee ° Personal Guarantee ° Both

03

Recent Practice Experience

Our firm has excelled over the years in representing companies on various projects in which implementation of measures have been required for the purpose of guaranteeing obligations.

In recent practice, we had the opportunity to advise our client, an intermediary company in the commercialization of minerals. Initially, our client executed two contracts of sale with a mining company by which that company sold our client zinc and lead concentrates. Our client then granted the mining company a loan with a mortgage guarantee (of a third party) and with joint and several liability of an individual, under which the loan would be used exclusively as working capital and for investment in equipment, a plant, and the needed inputs and upgrades so that the mining company could carry out its obligations with respect to the aforementioned contracts of sale.

The obligations of the mining company arose from both from the credit agreement and the two contracts of sale, in addition to ensuring the mortgage granted by a third party, as well as the joint and several liability of the individual, the latter and the mining company stipulated an exclusive right of exploitation and exploration for the benefit of our client with respect to the mining concession in the loan agreement. That right was subject to a suspensory condition in the event of a breach of obligations by the mining company with respect to the credit agreement and the two contracts of sale.

Given the client's business activity (the purchase and sale of minerals) and joint operation executed with the mining company (financing and sale), a guarantee of the survival of the agreed upon mineral commercialization business was needed in the event of breach of contract, and this was achieved through the granting of an exclusive right of exploration and exploitation of minerals, which, while not itself a guarantee, certainly has some characteristics of a guarantee, as it could be considered a pledge of rights without transfer possession.

Following the default of the mining company on its agreed upon obligations in the credit agreements and sale, the client sued for breach of contract and as a result was granted the temporary use and occupation of the mine to exercise the right of exploitation and exploration as stipulated in the credit agreement.

After complex litigation in which the breach of both parties and the nature of the right of exploitation and exploration were discussed, an order was issued allowing for the occupation by the client over the mining claim to continue to temporarily exercise the exclusive right of exploration and exploitation as agreed.

04

Frequently Asked Questions

1. How is a pledge without transfer of possession formalized and executed?

This contract is granted in writing, and individually identifies the pledged assets, either by the category of the goods or generically. When the operation concerns goods in amounts equal to or greater than two hundred and fifty thousand units of investment, the contract should be signed and notarized before a notary and registered in the Single Registry of Secured Transactions.

When there is a default in payment of the secured credit with this type of pledge, the enforcement of this pledge is obtained through a special judicial process that seeks payment on the debt and grants material possession of the pledged assets for the purpose of allowing the creditor to dispose of or sell the pledged assets, as appropriate, once a judgment ordering the payment of the debt is handed down.

2. What are the differences between a corporate bond and a surety bond?

When using a corporate bond as the source of a claim for payment made by the beneficiary, the surety must verify both the enforceability of the established obligations as well as a breach of those obligations. This requires the debtor of these established obligations to provide documentation demonstrating compliance with its obligations. In the event of judgment against the surety, a prejudicial judgment may be declared.

When using a surety bond as the source for payment of a claim of the insured, the insurer will check to see if it meets the circumstances surrounding the breach of the secured obligations as agreed upon in the insurance contract, which unlike the bond, can be modified and results from a mere written claim of the insured or delivery of certain documents. In some cases, this may require a judgment for the beneficiary establishing breach.


GOODRICH'S
BLUE
BOOK
MEXICO

BANKING, SECURITIES, AND FINANCE

Enhance competition in the financial services market, expand available credit to companies and individuals, reduce borrowing costs and promote credit through development banks, were the principal objectives of reforming the financial sector in Mexico…

GOODRICH
RIQUELME
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Introduction

In early 2014, a comprehensive reform with respect to the regulation of the financial sector was passed here in Mexico. The principal objectives of this reform were: to promote credit through development banks; enhance competition in financial services market; expand available credit to companies and individuals; reduce borrowing costs; and ensure the soundness of the sector.

In the field of banking, an increase competition is expected, improving access to credit for large sections of the population. The Mexican banking sector is highly concentrated: the six largest banks hold a market share estimated at between 60 and 70% of the total market. The three largest banks account for over half of total assets and loan portfolios.

While an increase competition is being sought, these reforms also recognizes the need to ensure the financial soundness of the institutions operating in Mexico, through the implementation of, and compliance with, objective parameters that must be monitored by regulators. For this reason, the powers of the National Commission for Banking and Securities (CNBV), the Bank of Mexico (BANXICO), and the National Commission for the Protection and Defense of Users of Financial Services (CONDUSEF) to monitor the sector and enforce the law have been strengthened.

Even before the introduction of the most recent reforms, the creation of laws on money laundering and the protection of personal data marked a major shift in the regulation of this sector, forcing the entities involved in this industry to implement adequate procedures for compliance with these new rules. The challenge for those who wish to participate in the financial sector, or do business with organizations that comprise it, is to know how these laws, and the rules issued by regulators, are interlinked with the laws that are specifically applicable to each of the activities in the financial market.

02

Key Points

The following entities are subject to authorization in order for them to conduct activities within Mexican territory: **(i)** banks; **(ii)** brokerage firms; **(iii)** stock and exchanges and rating agencies; **(iv)** securities depositories institutions; **(v)** insurers; **(vi)** surety companies; **(vii)** general bonded warehouses; **(viii)** currency exchanges; **(ix)** credit information companies. These activities can only be conducted within Mexican territory by entities that have the corresponding authorization from the federal government. By contrast, any individual may perform leasing and factoring on a regular and professional basis, without requiring authorization from the federal government.

Additionally, entities called SOFOMES (multipurpose financial companies) exist in the national financial sector. These are companies that, by obtaining funding resources from financial institutions and/or through the issuance of public debt, grant credit to the public from various sectors and perform financial leasing and factoring operations. A SOFOM cannot raise funds from the public and does not require authorization from the federal government to be created; an entity only needs to have a current registration with the National Commission for the Protection and Defense of Users of Financial Services. Within SOFOMES, there are two categories: regulated (SOFOM E.R.) and unregulated (SOFOM E.N.R.). In general, regulated SOFOMES are companies with economic links to institutions that lend money to the public, for example, banks, those that issue debt securities, and that are registered in the National Securities Registry. Unlike banks, SOFOMES are not allowed to raises funds from the public for subsequent lending.

The regulatory agencies for the financial sector are:

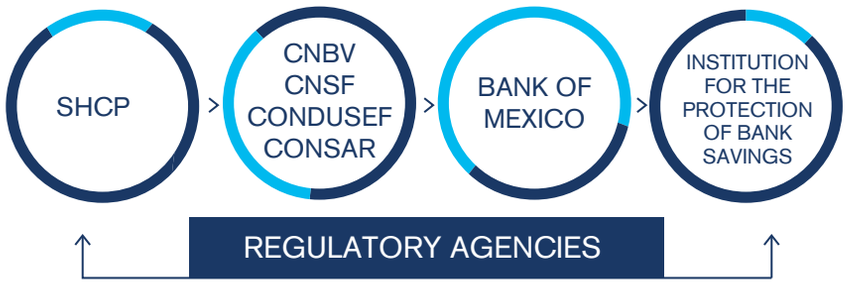
(i) the Ministry of Finance and Public Credit;
(ii) the four National Commissions: Banking and Securities; of Insurance and Bonding; the Retirement Savings System; and the National Commission for the Protection and Defense of Users of Financial Services;
(iii) the Bank of Mexico;
(iv) the Institute for the Protection of Banking Savings.

The different authorities act in a coordinated manner, within the sphere of their jurisdiction. It is important to note that in Mexico, all banking and financial regulation falls under federal law, and for this reason, the application of these laws falls to federal authorities.

In addition to the specific laws governing each of the activities that make up the financial sector, there are additional rules such as the Law on the Transparency and Regulation of Financial Services, the Law on the Protection and Defense of Financial Service Users Act, the Federal Law on the Prevention and Identification of Operations from Illicit Sources, (anti-money laundering law) and the Federal Law for the Protection of Personal Data Held by Private Companies or Individuals.

Depending on the activity performed, rules issued by the regulatory authorities may also be applicable. Banking and credit activities in particular are regulated by the General Provisions Applicable to Credit Institutions,

which are issued by the National Banking and Securities Commission (known as the “Banking Single Circular”). There is also an equivalent document for insurance activities, known as the Insurance Single Circular.



03

Recent Practice Experience

Our clients include banks in North America, Europe and Asia. We also advise companies that specialize in providing credit within a certain sector, and clients that provide services to entities in the financial sector.

When it is necessary to resolve the business needs of our clients, the detailed regulation of the financial sector and the protection of public interest are often the most interesting. One of our clients is a services provider to companies that are part of the financial sector, including banks and insurance companies. The services provided by this client are essential for granting credit. For entities that use these services, it is indispensable for them to have these services provided to in the shortest possible time, and in full compliance with the standards applicable to the banking and insurance sector.

Contract negotiations between our client and the users of the service provided contained a number of complexities. First, it was necessary to delineate the way that some of these services would be subcontracted, especially in the field of Information Technology. This subcontracting involved the transfer of personal data that is protected by law, and therefore it was necessary to ensure that this data would be adequately protected. It was necessary to define precisely what data was to be transferred, and how they would be transferred out of Mexican territory if necessary, with the goal of providing services without interruption.

A second issue in these negotiations was establishing if it was necessary to consider whether, in light of the provisions of the Banking Single Circular, it was possible for credit institutions to contract these services without having to seek prior authorization from the National Banking and Securities Commission. In the event that it was necessary to obtain this authorization, the rendering of these services would have been significantly delayed. Fortunately, with careful analysis and adapting the service to the terms established in the Circular, it was possible to proceed in a shorter time frame and without prior authorization.

Finally, we had to create a framework by which our client could fulfill the obligations imposed by banks with respect to physical and information technology security for all information received. With careful study of the appropriate regulations, and discussions with technical staff involved with our client and the services users, as well as the areas of legal compliance verification of the banks, it was possible to create a model that protects the interests of our client, the users of these services, and the individuals who entrust their data to the banks.

Once the appropriate framework was established to provide services to the banks, it was possible to recreate it for other regulated entities also contracting the same services from this client, such as insurance companies, for example.

04

Frequently Asked Questions

1. Is it possible to offer financial products and services in Mexico without authorization from the federal government?

Only in leasing, factoring, credit (subject to certain limitations), and money transfer activities.

2. What legal regulations must be taken into account in financial matters?

In addition to the laws applicable to the specific activity, the circulars of the applicable regulatory commissions must be taken into account. These circulars include various corporate and administrative requirements. There are also laws and rules issued by the authorities for the prevention of money laundering and for the protection of personal data. Finally, there are laws that establish obligations with respect to public information in the matters related to mortgages and consumer credit.

3. Is it possible to conduct securities offerings in Mexico without having a special license or registration?

In the legislation related to the stock market, there is a concept of a private offering of securities. Tenders, which meet the criteria for being considered private, can be carried out without prior authorization or registration.

4. Under what considerations is it determined that an offer of securities is private?

When it is being conducted with less than a hundred people; when it is being conducted under an employee benefits programs; when it is being conducted as part of a club and its member; or it is done with qualified investors or institutions.

5. Can a foreign insurer insure risks that occur in Mexico?

No, this is not permitted when the insured person is in Mexico, or if the insured risk occurs within Mexican territory. Nor is it possible to insure financial transactions if the insured is subject to Mexican law.

ENVIROMENTAL LAW, AND CLIMATE CHANGE

Today issues such as climate change, water, waste, forest land, biotechnology, biodiversity and environmental liability are just some of the issues that environmental regulation governs…

GOODRICH
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Introduction

As in other countries, the environmental legal framework in Mexico is constantly developing in response to the advances in production and technology, and that require an environmental legal framework that addresses the needs of society and the impacts that human activities have on the environment.

A primary example of the evolution of the Mexican legal framework is, without a doubt, the legislation on climate change that includes, among others, ambitious goals for the reduction of greenhouse gas emissions, as well as the obligations of entities that produce such gases to submit annual reports detailing these emissions.

Similarly, and in response to the recent energy reforms, the National Industrial Safety and Environmental Protection Agency of the Hydrocarbon Sector ("ASEA") was created which has as one of its functions the task of regulating environmental issues in the hydrocarbon sector through policies of environmental performance which will allow the hydrocarbons sector to exercise greater participation and involvement with respect to how to regulate their production.

Moreover, the regulation on Environmental Liability for damages to the environment, and its corresponding "social impact," has demonstrated the evolution of our legal framework. These regulations include provisions aimed at regulating, i) environmental damage, repair, compensation, and punishment; and ii) the social impact that permits parties to be involved in a project or activity, by the monitoring the social impacts, and addressing the manner in which these impacts will be mitigated so as to ensure that the fundamental rights of indigenous peoples, and the communities in which these activities are being conducted, are respected.

02

Key Aspects

- Environmental matters are regulated concurrently between the Federation, States, Municipalities, and the Federal District, and each government entity passes its own legislation with respect to environmental matters.

- It is important to analyze the legislation applicable to each project, taking into consideration its features and the sector to which this legislation applies, in order to determine the appropriate authority for the regulation of the establishment and operation of a project.

- Some environmental issues have a cross-sectional approach (eg. climate change, wildlife, and water).

- While the Mexican legal framework is characterized by a prescriptive approach, in the case of activities in the hydrocarbon sector, regulation based on environmental performance is expected.

- The Federal Environmental Liability Act aims to regulate environmental damage and repairs, and regulates environmental liability. This law provides for restitution and compensation for damages, and for economic sanctions, as applicable. This type of environmental liability is independent of any administrative, civil, or criminal liability arising from the act that caused the damage.

- The National System for the Voluntary Emissions Market was created to promote the trading of carbon credits that are created as result of projects being developed in our country for the reduction of GHG emissions, or for their capture.

- Mexico has set targets for reducing GHG emissions in the country (30% reduction of the emissions by 2020, and 50% by 2050). Therefore, individuals must comply with the legal provisions aimed at achieving these goals, such as the creation of the National Emissions Registry, in which the entities subject to reporting must provide information about the direct and indirect greenhouse gas emissions they generate.

- Compliance with the legal provisions applicable to these entities is regulated and enforced by the relevant authorities, or by environmental protection prosecutors at various levels of government, through the implementation of inspection visits to verify compliance and impose appropriate sanctions for noncompliance.

- Social aspects have gained great relevance in project development in the country. In the development of activities in the hydrocarbon sector, prior consultation with Indigenous Peoples and Social Impact Assessment shall be required for the purpose of taking into account the interests and rights of indigenous peoples and communities where these production activities are conducted.


LEGISLATION IN THE FOLLOWING AREAS SHOULD BE CONSIDERED
PROJECT THAT GENERATES OR COULD GENERATE ENVIRONMENTAL IMPACT
Environmental Compliance
Sustainability

03

Recent Practice Experience

Recently, our firm had the opportunity to advise a leading company in the international medical technology sector, which focuses on the production of medical, pharmaceutical, and health devices.

Importantly, the company, as a result of its production processes, engages in high water consumption and waste generation, as well as a number of emissions that are considered greenhouse gases.

As a result, at one of the plants the company is currently operating, buried waste was found on their property, which implied a risk in environmental matters for the company with respect to possible sanctions to which it could be subject, including environmental liability and environmental crimes. If the company was found to be liable for environmental damage under the Federal Environmental Liability Act, it would be required to repair the damage, and in the event that it was found that the company willfully acted unlawfully, it would be required to pay a financial penalty.

Therefore, a legal strategy was proposed that: (i) identified and categorized the contaminated soil to determine possible legal action, and in this case, a site cleanup was performed, (ii) refuted the claims of environmental liability against the company based on the results of studies, and an agreement was reached with the environmental authority for the company to perform a voluntary site cleanup, and (iii) successfully concluded the matter the authority without punitive consequences for the company.

Additionally, in order to fulfill its legal obligations with respect to environmental matters at each of its plants, the company performed environmental audits, and also conducted staff training. The firm represented the company before an impending revocation of its Concession Title for the exploitation of national waters, which guaranteed a large volume of water for use in its production processes.

Our representation in the amparo proceeding and petition for review was essential to preserving the rights acquired via a transfer of rights by a third party, and the issuance and registration of the Concession Title that authorized the use of the needed volume of water was obtained from the environmental authorities, which represents a major asset to the company.

Currently, as part of our environmental support work, a calculation and estimation of the carbon footprint is being conducted as part of the new obligations under the new regulatory framework on climate change.

Furthermore, consulting for and representation of the company for the purchase and sale of carbon credits to the Mexican Carbon Platform, MexicO2, is taking place. MexicO2 is a clearinghouse of carbon credits and campaigns for financing environmental projects, and is regarded as an independent subsidiary of the Mexican Stock Exchange.

04

Frequently Asked Questions

1. Is an authorization on environmental matters required prior to the initiation of any work or activity that could impact the environment?

Depending on the type of work or activity, an environmental impact authorization should be obtained from the federal or state authorities, as applicable. It should be reiterated that in the hydrocarbons sector, since the passage of the energy reforms, the authority charged with the assessment and issuance of authorization is the ASEA.

2. What types of facilities should submit a report to the RENE?

The facilities that are subject to reporting requirements are fixed and mobile entities that conduct production and commercial activities or services, and whose operations generate, either directly or indirectly, GHG emissions in the following sectors: energy, transportation, industrial, agricultural, waste, trade, and services.

3. Who is required to prepare a social impact assessment?

Those parties interested in developing projects in the field of hydrocarbons must submit an assessment to the SENER containing identification, prediction, and valuation of social impacts.

4. What are the consequences associated with causing damage to the environment under the Federal Environmental Liability Act?

Any company or individual that, through its acts or omission, either directly or indirectly, causes damage to the environment, shall be liable and shall be required to repair the damage, or pay environmental compensation in the event that it is technically impossible to totally or partially repair the damage.

Additionally, a financial penalty may be imposed when damage is caused by an intentional wrongful act or omission, which is ancillary to the restitution or compensation for the damage.


GOODRICH'S
BLUE
BOOK
MEXICO

FOREIGN INVESTMENT

Mexican law allows for the participation of foreign capital in various activities and also regulates those areas that are reserved to the State...

GOODRICH
RIQUELME
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01

Introduction

In recent decades, Mexico has been focused on creating an open economy in order to ensure access to new markets in an environment that is conducive to investment, and establishing itself as a destination for foreign investment through the implementation of economic liberalization plans which were set out in the early nineties. Significant trade and investment barriers have been eliminated through the implementation of more flexible laws aimed at attracting foreign capital by allowing foreigners access to a number of economic activities that were previously reserved for Mexican investment.

Moreover, Mexico has entered into several trade agreements, such as NAFTA and a treaty with the European Union and shortly the TPP, allowing Mexico to expand its market for goods and services. Also, with the inclusion of Mexico in the World Trade Organization, the country has set specific goals for economic policy, including those for the creation of an open economy by ensuring access to new markets in an environment that is favorable to investment.

The governmental authority responsible for implementing and monitoring regulations on foreign investment is the National Commission for Foreign Investment (CNIE), which is a branch of the Ministry of Economy. The CNIE keeps statistical information on foreign investment through the National Registry for Foreign Investment (RNIE).

Mexican legislation on foreign investment allows for the participation of foreign capital in various activities, and also regulates those areas and activities that are reserved to the State (petroleum, electricity, nuclear energy, postal services, production and issuance of banknotes and coinage, and control over airports, among others), or to Mexican individuals or Mexican companies with a Foreign Exclusion Clause; and those activities in which foreign capital participation is limited to a certain percentage, or where the percentage is subject to authorization by the Ministry of Economy.

02

Key Aspects

- Foreign investment is defined as: (i) The participation of foreign investors in the capital stock of Mexican companies, irrespective of percentage, (ii) Mexican companies comprised primarily of foreign capital; and (Iii) Participation of foreign investors in activities and acts as established under the Foreign Investment Law.

- Foreign investors may participate, in any percentage, in the capital stock of Mexican companies, or in activities that are not prohibited or limited by the Foreign Investment Law.

- Foreign investment can be direct, indirect, or neutral.

- Foreign direct investment includes capital imports from abroad for the establishment and development of companies, and for the maintenance of their functions and operations.

- Indirect investment includes borrowings made within a country through debt generating instruments.

- Market-neutral investment is that which takes place in companies and trusts authorized to issue neutral investment instruments, and which only grants pecuniary rights to their holders. This type of investment shall not be counted when determining and calculating the percentage of foreign investment in the capital stock of a company.

- The Constitution requires foreigners who wish to conduct business in Mexico to be considered as if they are Mexican and shall not invoke the protection of their government (Calvo clause). Under the terms of the Foreign Investment Law, those foreign entities that wish to undertake these business acts must obtain authorization from the Ministry of Economy.

- The Ministry of Economy, through the CNIE, is the authority responsible for the implementation of the regulations on Foreign Investment in Mexico.

- The Foreign Investment Law establishes that individuals, companies, and trusts with the intention of conducting operations with foreign capital must submit various financial information reports to the National Registry of Foreign Investment.

- The Constitution of the United Mexican States lists certain strategic activities, which by their importance to the nation may only be exercised by the Mexican government, including: the production and refining of petroleum, generation of nuclear power, and extraction of radioactive materials, among others.

- The Foreign Investment Law sets out various activities in which only domestic investors can participate, and those in which the percentage to which foreign investors can participate is limited.

- There are several ways to invest in Mexico, the most common is the creation of a Mexican corporation (see chapter on Corporate Matters), although it is common to make investments through joint ventures, distribution agreements, franchises, or directly through the opening of a branch.


Activities reserved to the State
Market-Neutral Investment
Activities reserved to Mexicans
LIMITS ON FOREIGN INVESTMENT
Majority Acquisition of a Mexican company
Activities with specific regulation
Real State
Activities where majority stakes are subject to authorization

03

Recent Practice Experience

In recent years, Goodrich, Riquelme y Asociados has supported foreign investment to achieve economic openness based upon the international treaties signed by our country. This has allowed for the establishment of several companies, and the participation of foreign investment within the limits established by the Foreign Investment Law and its corresponding regulations.

A rather exemplary case that our firm worked on in recent years, is one in which a Spanish company hired our firm to support them in their establishment of a Mexican company whose primary purpose would be the operation of private educational institutions, at any level.

A Mexican company would allow for the participation of both Mexican and foreign capital, however, the Spanish company required a participation in the capital stock of the Mexican company as that of a majority shareholder, with a participation percentage of greater than 90%.

As noted in previous sections, there are limitations on certain activities, and in these circumstances the percentage share of foreign investment is limited, and in these certain circumstances a favorable resolution by the CNIE is required for foreign investment when participation involves a percentage greater than 49%; This is the case for companies interested in providing private educational services for preschool, primary, secondary, upper secondary, and higher education.

With our knowledge of these limitations and reservations as established under the Foreign Investment Law, our firm explained to the client it would be necessary to initiate proceedings before the CNIE so that the Spanish investment would be allowed to participate in the Mexican company with a percentage of participation greater than 49%. Our firm also advised the company that this is a long and complex process, under which the decision of the CNIE is based on whether the foreign company wishing to participate in the Mexican company can demonstrate the benefit that their investment might generate for our country. In other words, the agency has the discretion to either approve or reject the application.

In light of the abovementioned, and in order to meet the requirements of our client, we participated the corresponding proceedings before the CNIE and managed, in a timely manner, to meet the needs of our client and demonstrate that the investment would bring benefit to our country. This allowed the establishment of a Mexican company with majority foreign capital in an area that by its very nature is regulated in favor of Mexican investors.

04

Frequently Asked Questions

1. What are the percentage limits on foreign investment in Mexico?

Up to 10% in production cooperatives, and up to 25% in:

- National air transportation,
- Air taxi transportation,
- Specialized air transportation.

Up to 49%, with the approval of the CNIE, in sectors such as:

- Manufacture and sale of explosives,
- Printing and publication of newspapers for exclusive circulation in national territory
- Freshwater fishing,
- Port Authority management,
- Supply of fuels
- Shipping companies,
- Port services piloting,
- Radio broadcasting

Greater than 49%, with the approval of the CNIE, in sectors such as:

- Port services, such as towage, mooring, and lightering
- Shipping companies engaged in the operation of vessels in high traffic
- Legal services
- Concessionaires or permit holders for airfield services to the public,
- Private education services at all levels,
- Construction, operation, and management of railroads.

Finally, certain activities are reserved exclusively to Mexicans, such as, land transport of passengers and cargo (with the exception of courier or parcel services), development banks, and certain professional services.

2. Can foreign individuals purchase real estate in Mexico?

Yes, unless the property is located within the restricted zone (50 kilometers from the coast or 100 kilometers from the border). Foreign individuals can use investment trusts or neutral investment schemes to acquire property within the restricted zone, however, this requires government authorization.

3. What is the difference between Market-Neutral Investment and Foreign Investment?

Foreign investment is: (i) The participation of foreign investors in the capital stock of Mexican companies, regardless of percentage, (ii) Mexican companies comprised primarily of foreign capital; (Iii) Participation of foreign investors in activities and acts as established under the Foreign Investment Law.

Market-neutral investments are those that take place in companies and trusts authorized to issue neutral investment instruments, which grant only pecuniary rights to their holders. This type of investment shall not be counted when calculating and determining the percentage of foreign investment in the capital stock of a company.

4. Does Mexico offer incentives for foreign incentives?

Yes. Several states in Mexico offer incentives for foreign investors who want to establish businesses within the State, such as exemptions from certain local taxes and discounts on official registration. Foreign investment in Mexico is also protected by international agreements, which allow investors to participate in commercial and investment arbitration.

5. What are the obligations of foreign investors in Mexico?

All investments must be registered with the RNIE. If the activity requires the authorization of the CNIE, the investor is required to complete the necessary applications before making an investment. Once the investment is made, the investor must submit various reports to the RNIE.

6. What is the consequence of failing to register a foreign investment with the RNIE or submit obligatory information related to such an investment?

The RNIE may impose fines.

INTERNATIONAL TRADE

Through different mechanisms for promoting foreign trade with other countries, the entry of goods to be stored, manufactured or repaired could be allowed without the payment of certain taxes...

GOODRICH
RIQUELME
ASOCIADOS

01

Introduction

Several publications, such as the Financial Times and the Economist, have predicted that Mexico will be a global power by the end of the next decade. According to data published by Goldman Sachs, it is estimated that out country shall become the 7th most powerful economy in the world by 2020 and will contribute 7.8% to the global Gross Domestic Product.

The network of Mexican trade agreements is the largest and most diverse in the Americas, with over 12 free trade agreement signed throughout the region, generating trade with 44 countries and with access to a billion potential consumers (with income equivalent to 60% of the global GPD). The Pacific Alliance, the Trans Pacific Partnership (TPP), and the NAFTA block are trade instruments that generate foreign currency reserves, technological innovation, and which attract foreign investment.

The promotion of exports of sophisticated products is the primary impetus for trade exchange, and that which most attracts capital investment to our country. The geographic location and the competitive cost of labor create an ideal platform for investment with various countries that are part of the Mexican trade network.

The automobile manufacturing, aerospace, and electronics industries are key to attracting foreign investment. Mexico is the 8th largest global producer of automotive vehicles, producing approximately 3.07 million vehicles, and making it the 4th largest exporter of light and heavy vehicles. The growth outlook for these industries indicates that there will be continued growth in the coming future, which should reach production of approximately 4 million units by 2018, and 5 million by 2020.

The Strategic Plan for the Aerospace Industry for 2010-2020, published by the Ministry of Economy estimates that the industry is expected to register exports in the amount of $12.267 million for 2021, with an average annual growth of 14%.

02

Key Points

- Proper customs and border management in growth promotion programs provides a variety of benefits for companies that utilize the benefits offered through programs like IMMEX, PROSEC, 8th Rule, and Draw Back.

  IMMEX: Allows for the temporary importation of goods with certain benefits for their subsequent export.

  PROSEC: Allows the importation of intermediate inputs with tax preference (with respect to the payment of the General Import Tax) for companies that are engaged in production.

  8th Rule: Allows preferential tariffs for the importation of certain goods such as, imported intermediate inputs, parts, components, machinery, equipment, and other goods related to production processes, treating these goods as if they were complete or finished goods.

- The proper use of these programs allows companies to access and utilize tax benefits, logistics, and preferential rates on imported goods.

- Currently, temporary imports under the IMMEX program are taxed at the Value Added Tax general rate of 16%. To mitigate this importation tariff, there is a benefit that these companies can access to guarantee that generated cash flow can be used to reduce or prevent such payments.

- This benefit can be used to obtain a tax credit (with applicable certification from the SAT) that can be used to offset 100% of the General Import Tax that is normally charged to temporary imports under IMMEX program.

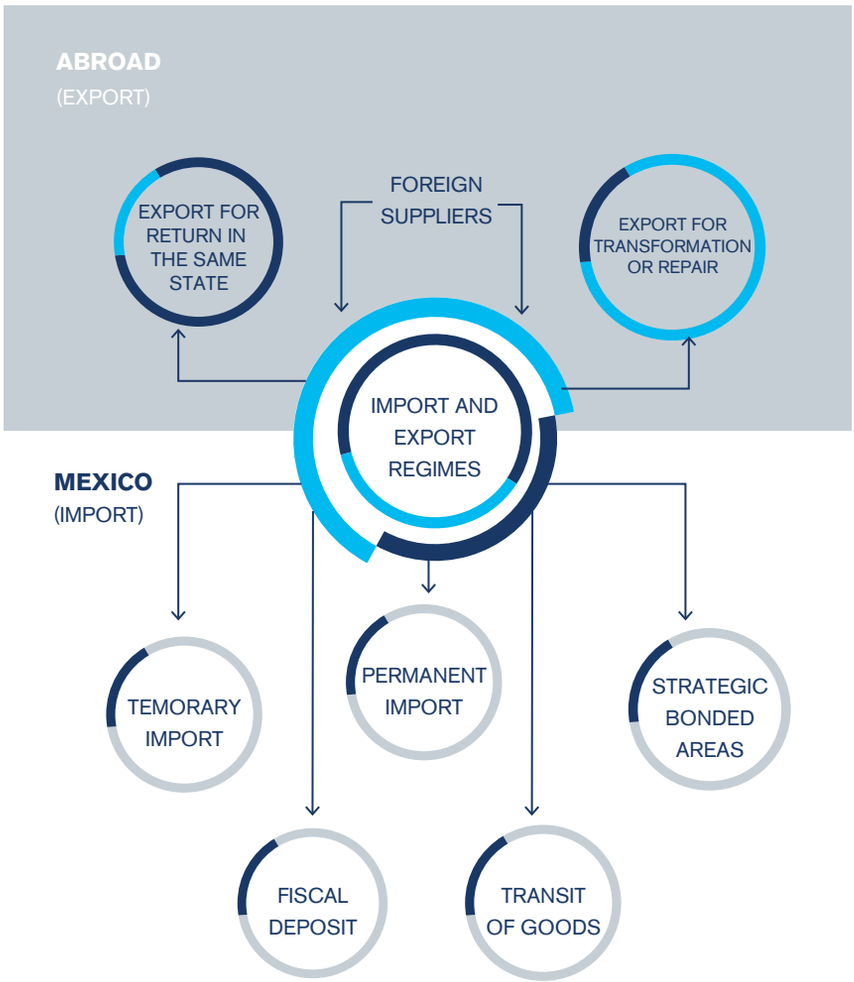
- With respect to international business practices, Mexico has conducted a total of 318 investigations. Of these, 291 of these have been investigations into dumping, 23 of these have been investigations into price subsidies, and 4 of these have been investigations into the use and imposition of safeguarding measures.

- In the production sectors that were analyzed, 39 percent of these investigations that were conducted involved the basic metals industry and related manufactured products; 26 percent of the investigations conducted involved the chemical and petroleum industry; and 35 percent of the investigations conducted were carried out in other sectors, such as manufacturing, agriculture, textiles, among others.

- With respect to the origin of goods, imports from 51 countries have been investigated. Of these, 25 percent of investigations involved goods being imported from the USA, and 22 percent involved imports from China.

- As a result of these investigations, 164 have resulted in the imposition of definitive countervailing measures; of which, 151 of these have involved dumping practices, 12 have been related to subsidies, and one has involved safeguarding measures. The practices have included 105 products from 26 countries, with China representing 27% of these practices, and the USA representing 25%. The industries that have been the main beneficiaries of these prescribed measures have been those industries involved in the

production of “base metals and related manufactured products,” representing 44% of these prescribed measures, and the “chemicals and derivative petroleum products” industry, representing 25% of these measures.



03

Recent Practice Experience

Our legal team recently obtained a favorable ruling in defense of a dumping proceeding, for one of the most important Asian companies in the global telecommunications industry. Our team defended the interests of both the importer, as well as, the exporter of merchandise as both parties were subject to anti-dumping duties. We were successful in achieving a reduction of the anti-dumping duty by 345.91%, on the imported merchandise that was being investigated by the International Trade Practices Unit (UPCI), which falls under the jurisdiction of the Ministry of Economy.

With respect to customs management, our legal team advised on operations undertaken within the framework of international trade for a leading Asian company in the telecommunications industry. These operations related to the importation of goods into free zones in the US and the return of goods to our country. In response to this counsel, the company managed to reduce its tax obligation for its imports and exports with respect to payment of the General Import Tax (IGI).

04

Frequently Asked Questions

1. **Do I have to pay VAT on the temporary admission of goods?**

   No, except in the case of goods that are intended for the customs arrangements for temporary importation for manufacturing, processing or repair in maquila programs or for export; bonding warehouses for the assembly and manufacture of vehicles; or for manufacturing, processing, or repair at in-bond plants or sites (maquiladoras), and strategic in-bond sites.

2. **Do companies have to pay VAT on the temporary importation of goods under the IMMEX program?**

   If a company has obtained a VAT certification, they can acquire a credit from SAT that can be used to offset 100% of the VAT on temporary imports through participation in the IMMEX program.

3. **What are the procedures for certification of VAT, and what they are?**

   Companies operating under the customs arrangements for temporary importation under the IMMEX Program, Bonding Warehouses for the Automotive Industry, manufacturing, processing and repair of goods in bonded warehouses, or under the Strategic Customs In-Bond Regime, can be certified with respect to VAT payment, under their certification rating of A, AA and AAA.

4. **Can a company recover the IGI (General Import Tax) paid on the importation of a commodity?**

   Yes, through Draw Back Program, which establishes the possibility of obtaining a refund of taxes paid on imported inputs, raw materials, parts and components, packaging and containers, fuels, lubricants and other materials incorporated into a product that are to be subsequently exported or for the importation of goods that are to be subsequently returned to their country of origin in their same state, or for their repair or alteration.

5. **Are there regulations for importing footwear, tobacco, and textiles?**

   Yes, as of 2015, there are new standards and regulations for importers of the goods described, and all companies intending to import products of in the textile and apparel industry are required to register with the Specific Sectors Importers Registry. Importers are subject to an additional requirement whereby they must open a customs guarantee account for these goods.

6. **Why is it important for importers to participate in Dumping Proceedings?**

   Investigations of unfair international trade practices are intended to impose definitive anti-dumping or countervailing duties, revoke these duties before they are imposed, or determine that the investigation is concluded without the need for imposing such duties. Therefore, importers must participate

in the proceedings to demonstrate they are not involved in any unfair trade practices, and avoid the imposition of any applicable anti-dumping or countervailing duties upon a specific product.

7. Does a free-zone regime, as described in the Revised Kyoto Convention, exist in Mexico?

No, however Mexico joined a similar free zone as described in the Revised Kyoto Protocol,[1] known as a free trade zone, in which foreign, domestic or nationalized goods are temporarily introduced into the country for the purposes of handling, storage, custody, exhibition, sale, distribution, processing, transformation, or repair, and are granted the benefit of not having to pay foreign trade taxes or countervailing duties that they would normally be subject to, nor are they subject to non-tariff regulations and regulations and official Mexican standards. Also, any scrap and waste generated as a result of production, elaboration, or repair processes does not generate a tax obligation or the imposition of countervailing duties, and companies that operate under this regime are granted multiple logistical and economic benefits.

[1] The Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures, also known as the revised Kyoto Convention, defines a free zone as the territory of a Contracting Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory.

GOODRICH'S

BLUE BOOK

MEXICO

COMMERCIAL BANKRUPTCY

“Bankruptcy law allows for the reorganization of a business through a process of conciliation with creditors …”

GOODRICH
RIQUELME
ASOCIADOS

01

Introduction

The Commercial Bankruptcy Law forms part of the framework of the federal legal system, which came into force in May, 2000, and which aims to regulate the legal proceedings available to commercial entities in the case of widespread non-compliance of their payments obligations. The aim is to manage this state of insolvency and/or widespread non-compliance in order to allow the business to continue by reaching an agreement or agreements signed with its known creditors. On the other hand, in the event that the continuation of the current business is no longer feasible, the company, its productive units, and/or other assets may be sold for the purpose of paying the company's creditors.

The assumption is that widespread non-compliance has occurred when the business does not or cannot meet its payment obligations with two or more different creditors, at the rates and conditions set forth by the law.

It has been, at times, deemed necessary to society for the State to offer protection to certain companies and help them to avoid the generalized default of the payment obligations that threatens the viability of certain companies and others with which it has a business relationship. That is why commercial bankruptcy proceedings consist of two stages, the first is called "reorganization" and the second is "bankruptcy." The first one aims at conserving businesses through the negotiation of payment agreements that these companies enter into with their creditors; while the second involves circumstances in which these parties do not or cannot reach an agreement, and involves the sale of the company or negotiation between the parties, for the company's assets and rights which form the company to ensure that payment is made to their respective creditors.

The only parties that can declare bankruptcy are commercial entities. This is because although all individuals, both commercial and non-commercial, may experience economic strains that result in the non-payment of their obligations, only commercial entities can declare bankruptcy.

A commercial entity is any individual having the legal capacity to conduct, in a regular and professional capacity, commercial transactions for profit. Commercial entities are also companies incorporated under the applicable commercial laws, as well as foreign companies, agencies, and their branches, that are operating within the country for commercial purposes.

The following entities, appointed by the Federal Institute of Bankruptcy Specialists (IFECOM), handle commercial bankruptcy matters: the investigators, the mediators, the trustees, and the auditors.

02

Key Points

- The Federal institute of Bankruptcy Specialists (IFECOM) was created through the passage of the Commercial Bankruptcy Law. It is a governmental body with technical and operational autonomy, whose primary purpose is to help with the administration of Justice in Bankruptcy matters with respect to the technicalities involved in Bankruptcy proceedings.

- The effects of a bankruptcy judgment are: to establish which party is responsible for the administration of the company in the event that it is a legal and commercial entity, to suspend the payment of debts incurred prior to the date on which sentence takes effect, and ensure that no writ of attachment can be executed, or that any action can be executed against the property and rights of the commercial entity during the mediation stage, and to fix the retroactive date.

- The retroactive date shall be understood as two hundred and seventy calendar days immediately preceding the judgment declaring bankruptcy. All the acts executed by the insolvent commercial entity during this period are considered fraudulent against the creditor, and shall be declared null and avoid.

- The mediation period shall last a maximum of 365 calendar days.

  During this period, the Mediator shall present a provisional and final list of claims against the commercial entity so that, eventually, the judge, based on this list, can hand down a knowledgeable judgment that correctly categorizes and prioritizes creditors.

  At this stage, the primary function of the Mediator shall be to facilitate and guarantee the execution of an agreement between the merchant and the two third parties for the total amount of the recognized claims.

- During this mediation stage, the administration of the company shall be undertaken by the commercial entity, and shall continue to carry out its ordinary operations, including the necessary costs of doing business, which shall be overseen by a mediator (appointed by IFECOM) who shall be in charge of overseeing compliance of all the operations conducted by the commercial entity.

- During the bankruptcy proceeding, the commercial entity shall obtain the necessary lines of credit for maintaining the ordinary operations of the company and the liquidity that is required for these continued operations.

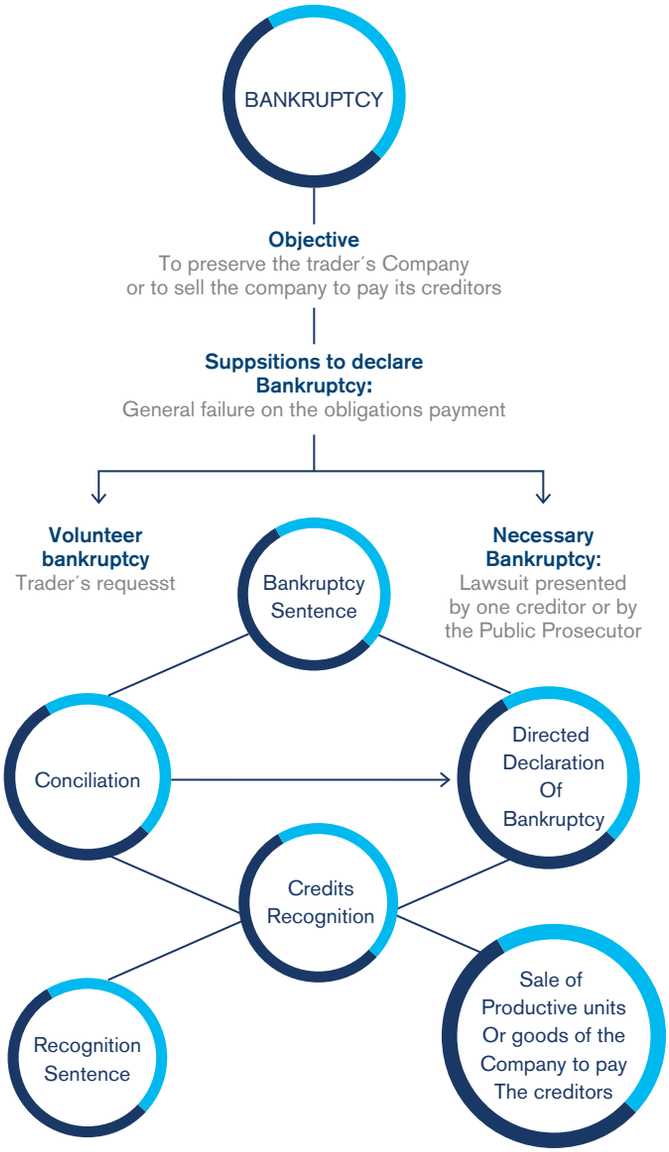
- After the bankruptcy judgment is handed down, relevant parties may initiate separate proceedings against the commercial entity, which shall be presented to the appropriate jurisdictional authorities under the oversight of the mediator (appointed by the IFECOM).

- The Commercial Bankruptcy Law contains a subsection that regulates the cooperation and coordination of international proceedings, for the purpose of establishing a legal basis for acknowledging foreign proceedings under those countries laws related to the bankruptcy, insolvency, and liquidation of the Merchant.

- Payment to creditors shall be carried out in the following order: Tax Claims, Wage Claims, Preferential or Secured Creditors, and then any other Creditors.

- The Commercial Bankruptcy Law was passed in 2000, and an amendment to the law was passed in 2007, which retained the much of the same original text of the law, until the passage of a substantial reform in 2014. The most relevant aspects of the 2014 reform, include:

    - The passage of law whose primary goal was the establishment of a proceeding that protects creditors.
    - Mechanisms that allow a commercial entity to obtain the necessary lines of credit to maintain the ordinary operations of the company.
    - The introduction of a regulatory framework for creditors that form part of the same corporate group.


BANKRUPTCY
Objective
To preserve the trader´s Company
or to sell the company to pay its creditors
Suppsitions to declare
Bankruptcy:
General failure on the obligations payment
Volunteer
bankruptcy
Trader´s requesst
Bankruptcy
Sentence
Necessary
Bankruptcy:
Lawsuit presented
by one creditor or by
the Public Prosecutor
Conciliation
Directed
Declaration
Of
Bankruptcy
Credits
Recognition
Recognition
Sentence
Sale of
Productive units
Or goods of the
Company to pay
The creditors

03

Recent Practice Experience

Among the bankruptcy matters in which this firm has been involved, it is important to highlight a particular proceeding involving a business arrangement in which “Merchant,” part of the corporate group “Mining” and owner of our client “Operator,” was subject to insolvency proceedings in accordance with the terms provided for under the bankruptcy law in force in the City of New York, United States of America, and addressed in accordance with the provisions of the Twelfth Title of the Commercial Bankruptcy Law, which provides the regulatory framework that facilitates cooperation between courts in different countries in matters of bankruptcy and reorganization.

Following the proceeding described in the previous paragraph, the administrators who participated in such proceedings, applied for recognition of the judgment in Mexican court for the purpose of establishing that our client should be declared bankrupt, despite the fact that even though “Operator” was part of the corporate group “Mining,” “Operator” remained a financially sound institution.

To avoid recognition of the bankruptcy proceeding that was abroad and the consequent bankruptcy judgment, we essentially argued that “Operator” was not conducting or engaging in commercial activities through its parent company within national territory, and for that reason, was not an establishment in Mexico as defined under the terms of the aforementioned law. In order to establish this, our firm participated in an incidental corresponding proceeding, and provided sufficient evidence to prove that our client was a different legal entity than the foreign commercial entity, and that the company had its own legal personality, obligations, and assets.

The interlocutory judgment held that “Operator” was not an establishment of “Merchant,” and for that reason held that “Operator” was not a company that should be declared in bankruptcy.

As a result, the company avoided the effects and legal consequences of the foreign proceeding and subsequent judgment, and it evidenced that it was more than just a member company of the same corporate group of the foreign entity, bearing its own legal personality and having its own assets.

04

Frequently Asked Questions

1. When is a commercial entity considered to have so substantially failed in the payment of its obligations that it should be declared bankrupt?

When a commercial debtor has debts due to at least two or more different creditors, and the following conditions have occurred:

• The obligations are at least thirty days past due, and the past due amount represents thirty-five percent or more of all the obligations of the commercial entity from the date on which a lawsuit is filed or an application for bankruptcy has been filed.

• The debtor does not sufficient liquidity to meet at least eighty percent of its past due obligations on the date on which a lawsuit is filed.

2. When may a creditor apply for recognition of outstanding credit obligations due?

• Within twenty calendar days following the date of publication of the bankruptcy judgment in the Official Gazette;
• During the period where a provisional list of credits is being compiled; and
• Within the period for filing an appeal to the judgment of recognition, classification, and prioritization of claims.

3. Does a creditor have recourse if it fails to request the recognition of outstanding credit before the conclusion of a payment agreement between the commercial debtor and its creditors?

The creditor can file a subsequent lawsuit in the appropriate and corresponding court.

4. What if the restructuring or mediation period expires without reaching agreement with creditors?

The judge will declare the initiation of a formal bankruptcy proceeding, in which a trustee replaces the mediator. The trustee takes possession of the debtor's assets in order to manage, and, ultimately, sell them, and pay the creditors. The primary goal is to sell the business as a unit, but in the even that this is not possible, they will proceed to sell off the assets separately.

LABOR LAW

“The Mexican legal system recognizes employee´s rights and obligations, that must be known to ensure the best labor relations between employers and workers...”

GOODRICH
RIQUELME
ASOCIADOS

01

Introduction

The right to work in Mexico is protected under the Constitution of the United Mexican States, specifically in Articles 5 and 123, with the Federal Labor Law (LFT), which regulates the latter, and which is responsible for regulating all aspects labor relations between employers and workers, and establishes a set of minimum inalienable social guarantees which are intended to promote dignified or decent conditions in all employment relationships, to ensure that human dignity of the employee is respected, without discrimination of any kind (whether either based on gender, age, disability, religion, immigration status, sexual orientation, or marital status, amongst others), to ensure access to social security benefits, to ensure that a proper compensatory wage is observed, that ongoing training is received to increase productivity, to ensure optimum conditions with respect to safety and health in order to prevent occupational hazards, and ensure that collective labor rights, including freedom of association (ability to unionize), the right to strike, and collective bargaining are respected.

The LFT establishes workers' rights beyond those provided in many industrialized countries. For example, employees are entitled to a profit sharing, can only be dismissed in a limited number of cases, and are entitled to seek reinstatement of employment or severance pay if they are unfairly dismissed.

Employers are required to register both their company and all their employees with the social security administration and with the workers' housing fund. Employers are also obligated to pay tax contributions related to these agencies, and the lack of registration or timely payment of legally established contributions by the employer shall result in additional tax burdens, surcharges, and penalties for late payment.

02

Key Points

- The fundamental element in determining the existence of an employment relationship is element of subordination that exists when a party is providing personal services. This type of relationship can exist irrespective of whether an executed written contract, or other formality that differs from an employment contract, exists between the parties.

- Employment contracts must be in writing. In the event of a dispute, the employer must provide evidence of the working conditions.

  The LFT provides that as a general rule the duration of an individual's employment is of indefinite term. Temporary contracts are permitted only where there is cause that justifies the limited duration. This allows the employer to establish terms such as probationary periods, initial training, etc.

- The purpose of a probationary period is to verify that the employee meets the requirements and knowledge necessary to perform the work requested, and for which that individual was hired. This probationary period shall not exceed a term of 30 days, or a term of 180 days in the case of management positions, general administration, or for work requiring professional expertise.

- Initial training is intended to allow an employee to acquire the knowledge and skills required for the position for which they will be hired. This training period shall not exceed a term of 3 months, or a term of 6 months for the management and professional positions mentioned above.

- In both cases, these period cannot be extended, and must be in writing; These terms may not apply to the same employee while working for the same company or establishment in a simultaneous manner or for successive periods of probation and initial training on more than one occasion, even if the employee is transferred to a different job position or receives a promotion, or even when the employment relationship has terminated and the employee regains employment at later date from that same employer.

- If at the end of the respective periods, the employee has not meet the necessary requirements or demonstrated the expertise required to undertake the position for which they were hired, based on the judgment of the employer, and taking into account the opinion of the Commission designated by the LFT, the employment relationship may be terminated at the discretion of the employer without liability.

- With respect to subcontracting, Article 15-A recognizes the contractor performing work or providing services as the employer of the workers under his authority, in favor of the individual or company that has been contracted. In this situations, it is the contractor that sets forth tasks and supervises the development and rendering of services, or the execution of the projects which have been contracted, observing the following rules:

  i. It cannot cover all the activities, either, identical or similar in nature, that are undertaken in the workplace.
  ii. It must be justified because of its specialized nature.
  iii. It may not include same or similar tasks as those performed by other workers employed by the contractor.

- If these conditions are not met, the contractor shall be considered an employer for all purposes under the terms of the LFT, including social security obligations, and as such must ensure that:

  i. The contract entered into with the contractor is in writing.
  ii. At the time of signing the contract, the contractor has the proper documentation, and is in compliance with related matters to meet the obligations arising from the employment relationship with its workers.
  iii. The contractor is in full and permanent compliance with the safety, health, and environmental provisions with respect to the workers operating at the worksite.

- The LFT prohibits subcontracting when the purpose of transferring employees from a contractor to a subcontractor is done deliberately for the purpose of reducing or circumventing labor rights.

03

Recent Practice Experience

Our firm has extensive experience in consulting, covering all kinds of questions related to specialized issues and other day-to-day questions that arise for companies in areas such as individual labor relations, working conditions, labor rights, and the obligations of employees and employers. Our firm also participates in the drafting of employment contracts and benefits plans for senior management positions, advising companies from key sectors such as the chemical, automotive, restaurant, and hotel industries, and working with companies in all aspects related to personnel outsourcing, in order to comply with the guidelines established by the LFT.

Similarly, we have solid experience with collective bargaining, which in most cases, involves situation where unions are actively involved in defending the interests of their members, leading the development, revision, or termination of collective bargaining agreements, while our firm ensures that the interests of our clients are effectively represented. Likewise, we advise a number of national and multinational companies in employment substitution processes and large-scale personnel readjustments arising from business decisions.

Notably, our firm participated in a negotiating process involving the termination of the collective bargaining agreement for an industrial plant owned by a major multinational company in the chemical and pharmaceuticals industry. Our client made a business decision to sell off a diverse multinational company, and as a result, there was a need to implement strategies for the transfer of staff and subsequent employment substitution, operating in the workplace. Another main aim was to obtain satisfactory results for not only for the companies involved in the operation, but also for the employees and the union, while meeting the obligations established under the LFT and the government agencies in charge of administering social security benefits and the workers' housing fund.

On the other hand, we also have extensive experience in handling labor lawsuits for wrongful termination. In particular, our firm's focus involves representing employers in situations in which an employee alleges unfair dismissal under circumstances where the employee has engaged in activity that gives cause for termination by the employer, without liability, under the term of the LFT. For example, where a worker commits a serious offense against the employer, which necessitates the termination of the employment relationship without liability for the employer, yet the employee makes demands for constitutional prescribed compensation and related payments, and alleges wrongful termination prior the date of the alleged offense(s) committed. In these circumstances, it is at times necessary to defend the employer in court, by offering evidence proving that the offense committed was directly related to a necessary termination of the employee-employer relationship, and thereby obtaining a judgment of acquittal for the employer.

04

Frequently Asked Questions

1. **Are “at will” employment contracts legal?**

   No. As a general rule, an employment contract is of indefinite duration. Temporary employment is permitted only when there is specific cause that justifies the limited duration of employment, such as a specific work project, performance of extraordinary work, or the temporary replacement of an employee that is absent as a result of leave, holiday, or other similar reason.

2. **Can an agent be considered an employee?**

   Yea. An agent can be considered an employee if that individual is a third party offering subordinate services for the company, or works personally and on a permanent basis as a sales agent for the company in the sale of their products.

3. **Is the payment of bonuses instead of profit sharing payments permitted?**

   No. Profit sharing is mandatory. However, an employer can set up a performance bonus system that will form part of the profit sharing payment, in which case, any difference shall be paid through a bonus. For example, if the employee is entitled to $100 through profit sharing, and his overall bonus is $120, he would receive a $100 profit sharing payment plus a $20 bonus.

4. **Is there a minimum number of employees required to form a union?**

   While the law requires a minimum number of twenty employees to form a union, it is possible for employees to join another, pre-existing union that is already formed and registered, regardless of the number of employees at a company. This allows employees to strike, if necessary, and allows them to request the negotiation of, and entry into, a collective bargaining agreement.

5. **Is it possible to avoid registering for and paying contributions into the social security benefits program by purchasing private life and health insurance for employees?**

   No. Participation in the social security system is mandatory and cannot be waived by contracting with private insurers.


GOODRICH'S
BLUE
BOOK
MEXICO

TRANSPORTATION

Multimodal transportation allows business operations to run more efficiently. From a legal standpoint this creates a complex network that requires an understanding of all components…

GOODRICH
RIQUELME
ASOCIADOS

01
Introduction

Timeliness in the development of commercial activities in the broadest sense, and commercial and industrial operations, in the strict sense, requires efficient transportation systems that allow these businesses to communicate with both their suppliers and their customers. The importance of logistics has a direct impact on the evolution of trade negotiations and on the competitiveness of theses businesses, and should not be overlooked.

As a rule, commercial operations, and above all international operations, involve the need for multimodal transportation, that is, the use of a combination of ground transportation (trucking or railway), air, and/or sea. While this so called "multimodalism" allows business operations to run more efficiently, from a legal standpoint this creates a complex network that requires an understanding of all components.

Consequently, commercial entities are therefore in a position where they, in general terms, must understand the legislation applicable to them in this field, and must have some knowledge of their principal rights and obligations under any transportation agreement.

No doubt, some of this complexity is also a result of this of this aforementioned legislation, which is usually quite diverse, although closely related, and requires a necessary interdisciplinary analysis.

Although Mexico is no exception to this rule, there are components that because our historical and legal traditions that, in addition to the abovementioned, must also be considered in the operations concerned, such as administrative law, foreign investment, and economic competition – and which are all discussed in other chapters in this book.

02

Key Points

- As can be seen above, Mexican law is divided into various regulatory bodies according to the type of transportation involved. It is noteworthy that for explanatory purposes, the following list is sorted according to the existing restrictions on foreign investment in the participation of these activities:

  1. With respect to land transport:

     a. The Federal Law on Roads, Bridges and Highways regulates highway transportation.
     b. The Law Regulating the Railway Service regulates railway transportation.

  2. The Law on Civil Aviation regulates air transportation.

  3. The Law on Navigation and Maritime Commerce regulates the maritime transportation.

- Also important to mention, is that there are different regulations for each of these laws, and those regulations that are most representative are those directly related to the aforementioned laws, but also include the Regulations for International Multimodal Transport. Furthermore, Mexico signed the United Nations Convention on International Multimodal Transport of Goods in 1982.

  However, as mentioned above, the Law on Foreign Investment plays a key role, as it sets various restrictions (see chapter on Foreign Investment).

  Land Transport

  1. Highway Transportation. A concession is required for the construction, operation, exploitation, conservation, and maintenance of federal roads and bridges. These concessions are granted for a term of 30 years and may be extended and renewed for an equivalent period. These concessions are awarded through a public procurement bidding process.

- A permit issued by the Ministry of Communications and Transportation is required to develop and operate the following services: (i) the operation and use of federal highways for cargo, passengers and tourism services; (ii) the installation of passenger and cargo terminals; and (iii) the operation of courier services.

- Liability: Highway transportation permits holders and their drivers are jointly and severally liable for damages that are caused as a result of their services. All vehicles traveling on federal roads must have insurance for any damage that may be caused to third party property or persons.

- With respect to trucking, licensees are responsible for loss and damage suffered to the goods they are carrying. If the value of the goods had not been declared, liability is limited to an amount equivalent to 15 days of the minimum wage rate paid in Mexico City, per ton.

  2. Railway Transportation. Public rail transport service may be provided only through a concession granted through a public procurement bidding process. Such concessions may be granted up for a term of a maximum of 50 years, and may be extended up to a total term not exceeding those 50 years.

- Liability: The concessionaires of passenger transport services shall be liable to passengers who suffer damages to their person or to their luggage. They must also carry insurance that covers damage that may be caused to a passenger and/or his or her luggage.

Air Transportation and Aviation

- A concession is required to provide regular, scheduled domestic air transportation services and international air transportation services to the public (the latter only applies to Mexican companies). To participate and be granted a concession, a company must prove that they have the administrative, technical, financial, and legal capacity to provide these services. Similarly, a company must also demonstrate that they have all the necessary material elements to provide the corresponding service.

- The concessions shall be granted for a maximum term of 30 years, and may be extended and renewed for additional 30 year terms.

- Furthermore, the following activities require permission from the Ministry of Communications and Transportation: non-regular, unscheduled national services; regular, scheduled international services (for foreign companies), non-scheduled international services, and for private business use.

- Liability: The concessionaires or permit holder of domestic air transport services shall be liable for damages caused to passengers, cargo and luggage that they are transporting. For passengers, it is understood that the damage was caused during transport, if it occur from the moment the passenger boards the aircraft until it has landed. The concessionaire or permit holder shall be responsible for baggage from the moment issuing the corresponding luggage tag until delivery to the passenger of the luggage at their destination.

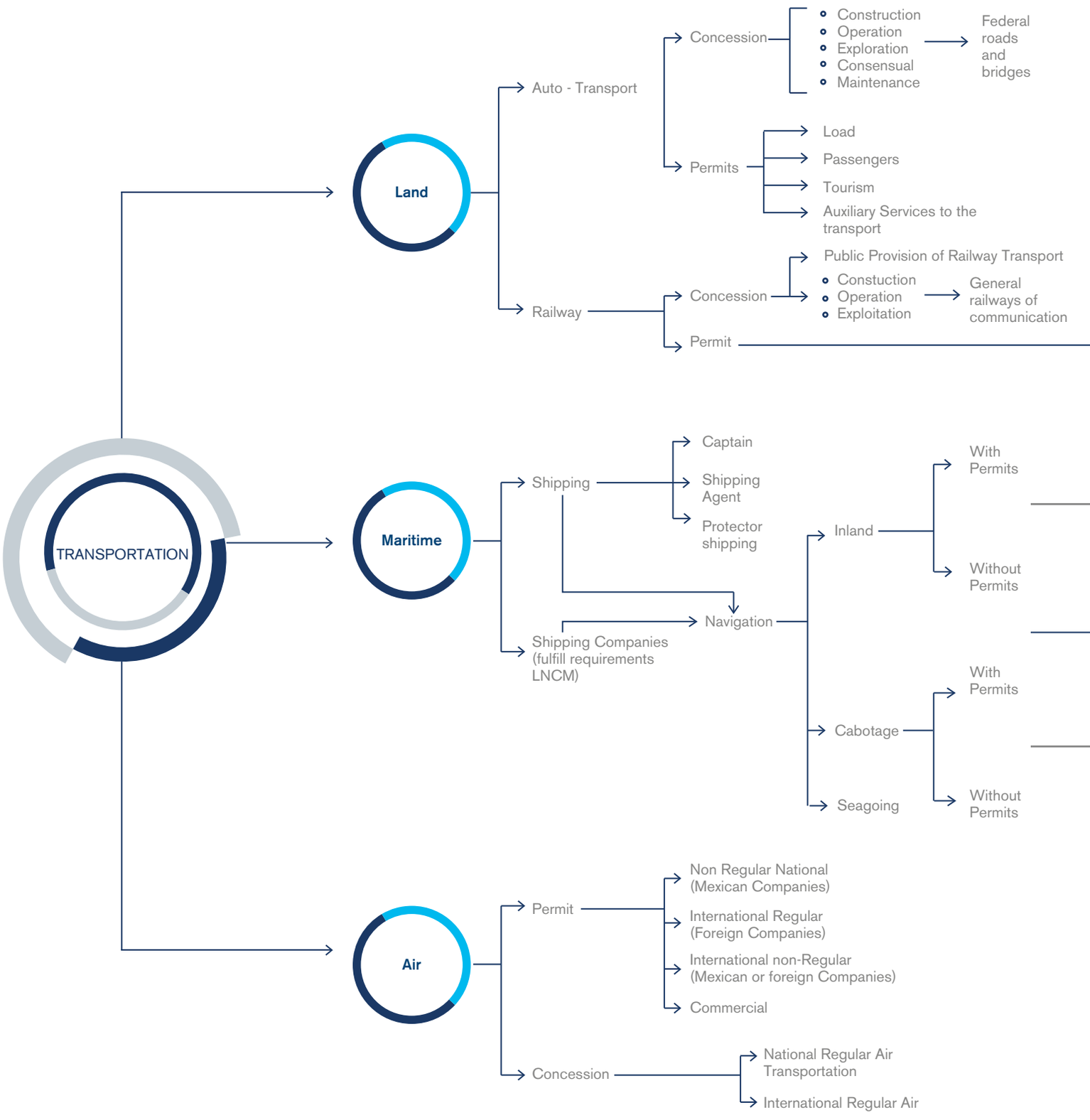
- With respect to cargo services, the concessionaire or permit holder will be responsible from the time it receives the cargo in its custody until it is delivered to the respective consignee. The liability of the concessionaire or permit holder is interrupted when the cargo is removed by order of the relevant authorities.

Maritime Transportation

- The Ministry of Communications and Transportation is the authority that grants and issues permits for navigation, and for providing any class of services with respect to general modes of water communication.

- It is important to note that maritime transportation may involve various kinds of typical contracts, which are established and described in the applicable substantive law.

- Liability: The liability for maritime transportation can be complex because of the magnitude that this type of transportation involves, from the liability to the user of the services, to liability under applicable international treaties and applicable laws, including the Hague-Visby Rules, the LLC Convention and other relevant international instruments.


TRANSPORTATION
Land
Auto - Transport
Concession
Construction
Operation
Exploration
Consensual
Maintenance
Federal roads and bridges
Permits
Load
Passengers
Tourism
Auxiliary Services to the transport
Railway
Concession
Public Provision of Railway Transport
Constuction
Operation
Exploitation
General railways of communication
Permit
Maritime
Shipping
Captain
Shipping Agent
Protector shipping
Shipping Companies (fulfill requirements LNCM)
Navigation
Inland
With Permits
Without Permits
Cabotage
With Permits
Without Permits
Seagoing
Air
Permit
Non Regular National (Mexican Companies)
International Regular (Foreign Companies)
International non-Regular (Mexican or foreign Companies)
Commercial
Concession
National Regular Air Transportation
International Regular Air

- Auxiliary Services
- Access Construction
- Publicity
- Bridges construction and operation over the railways
- Provision of services to the consessionarie and maintenance of the railways

- Passengers. Transport and cruises
- Security rescue and navagation assistance
- Tow, maneuver and lighterage to the port
- Dredging foreign ships
- Foreign ships for cabotage (special rules)

- Transportation of Cargo and tow
- Fishing, except for foreign ships
- Dredging - Mexican ships
- Ships specialized in civil work, construction and hydrocarbons explotation

- Passengers. Transport and cruises
- Security rescue and navagation assistance
- Tow, maneuver and lighterage to the port
- Dredging foreign ships
- Foreign ships for cabotage (special rules)

- Transportation of Cargo and tow
- Fishing, except for foreign ships
- Dredging - Mexican ships
- Ships specialized in civil work, construction and hydrocarbons explotation

03

Recent Practice Experience

As part of our firm's practice in this area, we represent various companies specializing in particular modes of transportation, and companies offering multimodal transportation services of goods, with the operations of the latter presenting a greater degree of complexity because of the diversity of applicable law. Similarly, as part of our representation of our clients, who are users of transportation services (shippers or cargo handlers), we have also provided services advising our clients for the purpose of representing and looking after their interests with respect to and in relation with the interests of those carriers.

A typical example of a case that affect the types of companies engaged in multimodal transportation of goods is, for example, where our client, who is a services providers, receives various requests from all types of companies for the transport of goods from various parts of the world and whose final destination is Mexico. When drafting a contract or contracts that are to be executed with the users of our client's services, the following should be considered:

The starting point of delivery of the goods, which is usually a foreign port since such delivery involves the transfer of risk and responsibility for custody to the carriers. In these cases, bills of lading or waybills, as applicable, are documents that are key to the legal relationship between the carrier or charterer. Although the latter is not a binding document, it is widely recommended that one should be issued.

Furthermore, the parties should clearly negotiate which party will handle the loading of the initial shipment.

Below, are some important points to consider in the formation of a contract for the transport of goods:

a. General and special care should be considered when determining the purpose of the contract.
b. Determination of the carrier's liability in the event of damage or loss of the contract. Relatedly, it is important to note the need for parties to negotiate insurance or extended warranties.
c. Types of transportation that will be used should be determined by contract. Usually our clients are responsible for the loading and unloading between transport and transport.

1. Date and place of delivery, and the method of such delivery, including but not limited to the party that is responsible for unloading.

As a result of the high number of operations in which our clients are involved, established limitations on liability are absolutely necessary, and as such, should be included in all corresponding contracts.

As legal counsel for carriers, we advise our client to ensure that:

1. The goods will be shipped, transported and handled in accordance within the specifications, as required in each case.
2. The goods must be delivered on the agreed upon date.
3. We recommend that companies provide adequate guarantees and engage in sounds operations in accordance with the usual industry practices.

04

Frequently Asked Questions

1. **What acts are most representative of possible liabilities that carriers may face?**

   a. Damage caused to shippers, to third parties, as well as to any goods that should have been delivered by transport.
   b. Omissions or mistakes when rendering these services.
   c. Damages in the event of delays in delivery or along the journey, unless this damage results from accident or force majeure.
   d. For the condition of the vehicle used to provide transportation services.

2. **Do carriers have the right to retain the goods?**

   Yes, when the shipper does not make full payment on the freight. Carriers have preferential rights over third parties with respect to these freight goods.

3. **Does the waybill and bill of lading offer proof of a contractual relationship between the shipper and the carrier?**

   Yes.

4. **What information is required on a waybill?**

   a. Full name and address of the shipper, or its corporate name.
   b. Full name and address of the carrier, or its corporate name.
   c. Full name and address of the recipient or consignee, or its corporate name.
   d. Full description of the property that is to be transported, including generic and specific categorizations, weight, distinguishing marks of the containers of these goods (if any), value (very important for liability issues), date of issue, place of delivery (cargo), date and place of destination, amount of compensation for breach, and any other agreed upon special conditions.

TAX LAW

“The law provides tax benefits and deductions for machinery and equipment for power and energy generation, for the hiring of people with disabilities, and for investment in real estate development, amongst others…”

GOODRICH
RIQUELME
ASOCIADOS

01
Introduction

The Mexican State is a federation made up of 31 states and a Federal District. As such, the Municipality is the basis for the territorial, administrative, and political divisions of each state. For this reason, the Mexican tax code provides for three levels of governmental taxation: Federal, State, and Local.

As a result of the divisions between the different levels of government, federal taxation is the primary level of taxation, and consists of the Federal Income Tax (ISR), the Special Tax on Production and Services (IEPS), and the Value Added Tax (IVA). States have established fundamental taxes, such as, a Payroll Tax (ISN), Property Tax, and a Real Estate Acquisition Tax (ISAI). The Mexican Constitution reserves the collection of tax revenue for drinking water, drainage, sewage, street lighting, etc. to the local governments. As of 2014, special taxes have been promulgated regarding the exploration and production – Oil & Gas Industry.[2]

The agency in charge of calculating and collecting federal income tax is the Tax Administration Service (SAT), while the state and local taxes are calculated and collected by their respective State and Municipal Public Treasuries.

It is important to keep in mind, however, that there are tax coordination agreements between the Federal and State governments, and as such, the states are entitled to audit and collect federal taxes.

[2] See oil and gas section.

02

Key Points

A. Federal Taxes

1. Federal Income Tax (ISR)

In Mexico, the income tax is a tax directly related to the earnings of individuals or companies, whether or not they are residents in the country with respect to the following cases:

a) The residents of Mexico with respect to all their income regardless of the location where it was earned;
b) The foreign residents having a permanent domicile or establishment within the country, with respect to income that is attributable to that permanent domicile or establishment;
c) Residents living abroad, with respect to income attributed to sources of capital located in national territory, when such individuals do not have a permanent establishment within the country, or when they do, such income is not attributable to it.

The tax rate for corporations is 30%, and a progressive rate ranging from 1.92% to 35% is used to calculate the tax rate for individuals.

The tax base, in general terms is calculated by subtracting the deductions, as authorized by the Federal Income Tax Law, from taxable income. For example, the general tax calculation for a corporation would be calculated by subtracting the participation of employees in corporate profit sharing, and then by subtracting the unamortized losses from previous years. The resulting amount is considered taxable income, and this is the tax base upon which the 30% rate is calculated.

The ISR is calculated annually, and provisional monthly payments are made to individual and corporate accounts.

Through the signing of agreements to avoid double taxation, Mexico has sought to prevent that individuals and corporations are taxed by two or more tax jurisdictions, or face taxation of similar nature, within the same period. At present, Mexico has signed agreements with 54 countries.

2. Valued Added Tax (IVA)

This tax applies to the sale, grant of temporary use or enjoyment, the importation of goods, and the rendering of independent services performed by individuals and corporations operating in the country.

The tax is calculated at a rate of 16% on the consideration or the value of goods and/or services. However, certain operations are subject to the rate of 0%.

In the case of imports, importers pay VAT directly upon these imported goods. For each taxable action, the taxpayer must charge and collect the tax from the company or individual who purchase goods, receives the use or enjoyment of goods, or the services rendered. The VAT taxpayer must collect the tax from the purchaser, and then credit an amount, which is equal to the tax collected from the total cost. The VAT tax that is collected is then payable in monthly statements, or credited to a balance to be paid.

Only VAT payers may credit the tax that is transferred to them so that, as a rule, end users, including residents abroad without a permanent establishment, can not recover the tax that they have been charged.

It is important to mention that the export of certain goods and services are taxed at the rate of 0%, which results in favorable treatment for these goods and services, and does allow for the recovery of taxes charged.

3. Special Tax on Production and Services (IEPS)

This tax is paid on the sale and import of goods such as alcohol, tobacco, gasoline, diesel, and the rendering of services, including the mediation and commission with respect to the sale of these taxed products, as well as, gaming, lotteries, and sports betting that are permitted in Mexico. The tax rate is variable rate and ranges from 3% to 160%, and is calculated and applied based on the value of the taxed activities.

B. Local Taxes

1. Payroll Tax

This tax is paid upon wages from employment. The tax rate varies from state to state, and ranges from 2% to 3%, depending on the total amount of wages earned.

2. Property Tax

This tax is levied upon land and the buildings attached to it. The tax rate varies depending on the value of the land and the building.

3. Real Estate Acquisition Tax

This tax is paid on real estate acquisitions of plots of land, buildings, or the buildings and land upon which they are built. The tax rate varies from 2.5% to 4.5% depending on the total value of the property.

- Income Tax: Corporations 30% and individuals 1.92% to 35%.
- Value added Tax: Exempt 0%, and 16%.
- Special Tax on Production and Services: Variable rate between 3% and 160%.

- Payroll Tax (Taxes on Personal Employment Earnings): Rate from 2% to 3%.
- Property Tax: Rates vary depending on the value of the property.
- Real Estate Acquisition Tax. Progressive rate up to 4.5%

03

Recent Practice Experience

As part of the multidisciplinary services offered by our firm, GRA provides tax advice to our clients in negotiating, documenting, and structuring commercial transactions, buying and selling companies, recapitalization and reorganization, joint ventures, as well as the organization and financing of newly formed companies. Working with tax experts who are actively involved in associations such as the Mexican Institute of Public Accountants, the Mexican Bar Association, American Bar Association, International Bar Association, and the International Fiscal Association.

Also, GRA has experienced lawyers that have worked in tax, constitutional, and human rights litigation involving tax matters on all judicial and administrative levels.

Furthermore, our lawyers have experience representing individuals before the tax authorities, offering legal counsel during auditing proceedings and in the performance of due diligence.

In the field of tax law, we are a leading firm, providing counsel to both national and international companies with operations in Mexico, as well as to financing institutions.

Specifically, we participated in one of the few cases litigated in Mexico and provided legal counsel to a multinational company, who is leader in the field of computer sciences, and has a presence in over 170 countries. We offered our legal services in helping to resolve an outstanding tax matter.

The relevance of this case was due primarily to the lack of judicial precedent, the high level of legal technicalities involved, and the application of foreign law, making this a uniquely complex case that involved a 9-digit amount in dispute.

In the end, we were able to obtain a ruling that proved favorable to the interests of our client.

04

Frequently Asked Questions

1. **Does the Mexican government provide tax benefits?**

   Yes, the law provides tax benefits and deductions for machinery and equipment for power and energy generation, for the hiring of people with disabilities, and for investment in real estate development, amongst others.

2. **Are transactions involving related parties subject to any requirements?**

   In some cases, it is mandatory to conduct a transfer pricing study. In all cases, individuals and entities must determine the value of their deductions and revenue as if independent parties were carrying out the transaction.

3. **Do mechanisms exist for avoiding double taxation in Mexico?**

   Yes, Mexico provides a credit for income taxes paid abroad, and also has entered into a number of international treaties to avoid double taxation. The majority of these treaties have adopted the OECD Model Tax Convention

4. **Does Mexico tax the payment of dividends?**

   Yes, in addition to the corporate tax that may be imposed on the company distributing dividends in Mexico, a tax obligation is imposed on shareholders receiving those dividends, and a tax rate of 10% will also be applied to these dividends that are paid to corporations that are residents of Mexico and to residents living abroad without a permanent establishment in Mexico. Corporations are required to retain this amount, which shall be considered a definitive payment upon its tax obligation.

   The additional taxes on dividends have been imposed upon income generated on or after January, 2014.

5. **Can one recover VAT paid in Mexico?**
   Yes, a taxpayer can reduce the amount of VAT they generate, and/or receive refunds on the VAT they have paid, provided they comply with certain regulations as established in the tax code.


GOODRICH'S
BLUE
BOOK
MEXICO

PUBLIC PROCUREMENT

Through a specialized system of Public - Private Partnerships (PPPs), the State exploits the technical and economic capabilities of the private sector, and in return grants concession agreements to ensure that its partners in the private sector obtain the expected benefits…

GOODRICH
RIQUELME
ASOCIADOS

01

Introduction

In Mexico, public procurement is an important area in terms of investment opportunities. It is the duty of government at all three levels: federal, state and local, to ensure that the State receives the best available terms with respect to pricing, quality, financing, opportunity, and other circumstances, in the hiring, purchasing, leasing, and transfer of all kinds of goods, as well as the contracting of services of any nature and of all kinds of works performed.

As a rule, public procurement is conducted through bidding processes, however, there are circumstances where concessions can be contracted through the following means: i) invitation involving less than three people, and ii) direct awards.

Public Procurement bids can occur in the following ways:

i) On-site, in person.
ii) Electronic.
ii) Mixed, where the bidder chooses the way in which wants to participate.
Bids may also be: i) national, ii) carried out under international treaties, and iii) open international tenders.

In recent years, Mexico has made significant changes in the legislation governing public procurement. Previously, at the federal level, this procurement was done through the Law of Procurement, Leasing, and Services for the Public Sector (LAASSP) and the Law of Public Works and Related Services (LOPSRM). However, because of the various structural reforms, productive State enterprises were excluded in the passage of these stated laws.

These productive State enterprises are first and foremost Petroleos Mexicanos (PEMEX) and the Federal Electricity Commission. These companies are wholly owned by the federal government and have specific legislation governing procurement dealings related to these ventures.

On the other hand, mainly for facilitating the rendering of services, the State connects with the private sector to build infrastructure that allows for the delivery of various public services. Through a specialized system of Public-Private Partnerships (PPPs), the State exploits the technical and economic capacities of the private sector, and in return grants concession agreements to ensure that its partners in the private sector obtain the expected benefits.

02

Key Points

- Public procurement in Mexico is conducted under the principles of efficiency, effectiveness, fairness, honesty and transparency so that there will always be important investments opportunities for businesses.

- Public procurement consists of several stages, and each of these stages ensures transparency within the bidding process, and the equal treatment of participants.

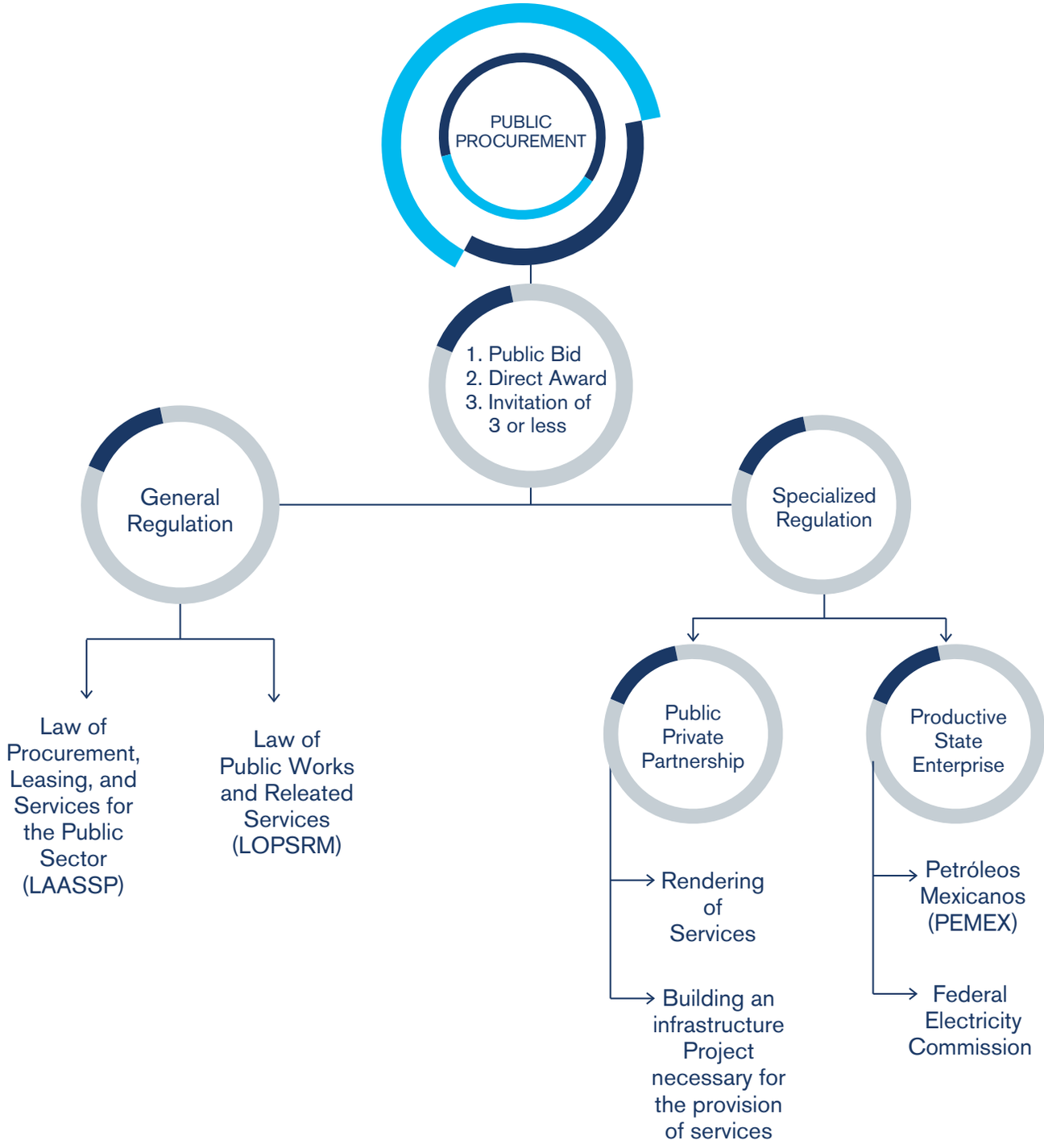
- During a public procurement bid where the amount exceeds the equivalent of 5 million days of the general minimum wage in the Federal District, as determined by the Ministry for the Public Administration, social witnesses will participate in the process and their function will be to propose improvements to strengthen transparency, fairness, and legal provisions with respect to procurement, leases, and services.

- The federal, state, and local government, when contracting goods, works, services, etc., generally publish announcements for public procurements across all official media broadcasts, with the goal of ensuring that anyone who is interested in participating in these bids is made aware of these notices and has an opportunity to participate.

- COMPRANET is a useful tool for the management of procedures for federal, state, and local procurement, when the latter two are utilizing federal resources for projects. When involving productive State enterprises, these companies have unique and internal systems similar to COMPRANET for the management of public procurement bids.

- The bidding rules constitute one of the primary documents of the procurement process. Through the bidding rules, the State discloses those who are eligible to participate in the procurement process, the technical requirements of the goods or services requested, and the conditions that they should fulfill, taking into account both the technical and economic aspects of the proposals. A model contract is also attached to the proposal so that the bidders are aware of the clauses of the contract to be signed with the prevailing company in the bidding process.

- The clarification meeting is the step in the process where participants enrolled in the bidding can ask questions regarding the content of the bid. The answers to the questions submitted by the bidders, which are submitted to the convening authority, modify the content of the bidding rules, and should be considered when developing the technical and economic proposals.


PUBLIC PROCUREMENT
1. Public Bid
2. Direct Award
3. Invitation of 3 or less
General Regulation
Specialized Regulation
Law of Procurement, Leasing, and Services for the Public Sector (LAASSP)
Law of Public Works and Releated Services (LOPSRM)
Public Private Partnership
Productive State Enterprise
Rendering of Services
Building an infrastructure Project necessary for the provision of services
Petróleos Mexicanos (PEMEX)
Federal Electricity Commission

03

Recent Practice Experience

Our firm has been involved in various projects involving public procurement, and we have offered our clients comprehensive advise in handling these processes.

In our recent practice experience, our firm had the opportunity to advise a company that is specialized in video surveillance equipment. In this particular case, the government of Mexico City needed to contract specialized services for cameras, drones, and video surveillance programs, and for the installation of a monitoring center made up of more than 10,000.00 cameras and more than 1,000 drones.

The government required a unique turnkey program where the supply of equipment, construction of infrastructure, equipment installation, and staff training to operate the equipment was included.

In Mexico there was no company with the technological capacity to offer a solution that met the requirements requested by the government, and as a result, the government needed to announce an international public procurement bid.

Because the companies specializing in video surveillance technology were foreign companies, but were not builders of civil works projects, they needed to partner with Mexican companies to cover such requirements, and in order to meet the quota of national participation requested. To meet the aforementioned needs, the bidding rules provided facts and figures for consortium partnerships and subcontracting.

The company, after signing agreements with trading partners and builders, participated in the bidding process, and a contract was awarded to the company, together with its partners.

A year later, and because the company has the rights to the software, the government of Mexico City awarded them a contract for software maintenance.

04

Frequently Asked Questions

1. **How can companies learn the procurement processes for goods, services, leases, and public works projects for the departments and agencies of government?**

   In the following ways:
   i. Through the websites of COMPRANET and productive state enterprises.
   ii. Through the websites of state and local contracting agencies.
   iii. Through publications that are published periodically in the Official Gazette of the Federation, the Official Gazettes of the States, and the Local Gazettes.

2. **What are the stages of the bidding process?**

   The bidding process begins with the publication of a notice, which establishes the foundations of the bidding process, and then the clarification meeting, which addresses the technical and economic proposals. The next stage is the submission and opening of proposals, and once evaluated, a judgment on the award is issued, and a contract is signed.

3. **How are problems resolved that arise from the implementation of contracts executed as a result of the procurement process?**

   The laws that govern the contracting procedures also provide mechanisms for dispute resolution arising from breach for performance of such contracts, and the interpretation of said contracts.

4. **What are the benefits of a Public-Private Partnership?**

   For the State, the main benefit is that it can meet the requirements for providing public services to the national population, and for companies, the benefit is that their business is guaranteed for an agreed upon term of years because of the concession awarded.

5. **Are there any additional ways other than the abovementioned ways to form a contract?**

   No, contracts can only occur through public bidding, with the exceptions of invitations where there are three or less people, or through direct award.

TELECOMMUNICATIONS

As a part of the ambitious structural reform package designed to lift the Mexican Economy and to create new business opportunities, the communication legal framework has undergone its major transformation in decades…

GOODRICH
RIQUELME
ASOCIADOS

01

Introduction

The federal government has recognized the importance of promoting conditions that favor fair competition in the telecommunications industry.

The reforms in this area were designed to cover various matters, among which are: (i) the promotion of competition and the efficient development of the telecommunications and broadcasting industry; (ii) promoting mobile phone coverage; (iii) strengthening infrastructure and improving the use of existing infrastructure; (iv) updating the legal framework in these industries; and (v) the creation of the Federal Telecommunications Institute (IFT) as an autonomous agency.

The IFT is responsible for overseeing the use and management of public telecommunications networks, broadcasting services, telecommunications, radio frequencies, orbital satellite resources and services.

Other functions of the IFT include, granting concessions for Telecommunications and Broadcasting, setting the amount of the consideration for the granting of such concessions in accordance with a non-binding opinion issued by the Ministry of Finance and Public Credit, while resolving any related issues. The IFT is the authoritative agency with respect to issues involving economic competition in the telecommunications and broadcasting industry.

With the goal of achieving universal coverage, the agency prepares an annual report on social coverage and a report on connectivity in public places.

A. Telecommunications and Broadcasting Concessions

The Ministry publishes annual reports on band frequency detailing those frequencies and bandwidth frequencies within a determined spectrum that will be offered through a bidding process or that may be assigned directly, as well as services that can be provided through these frequencies or bandwidths, their category, methods of use, and geographic coverage.

In July 2015, the IFT issued general guidelines for the granting of telecommunication and broadcasting concessions. These guidelines contain detailed requirements applicable for the procurement of various types and uses of concessions, as provided for in the legal framework, as well as indicating the terms under which they may be granted.

In order to promote fair competition, the Institute reviews the controlling shares of the concessionaire and may object to the underwriting of the operation or transfer of rights.

B. Installation and operation of public telecommunications networks

The applicable regulations also stipulate the obligations of the concessionaires regarding the installation and operation of public telecommunications networks, their interconnection, and effective interoperability; and establish that the services are provided on a nondiscriminatory basis, and respect the established rates even in cases where commercial and marketing agreements are executed.

The interconnection agreements must be registered with the Institute.

The concessionaires of public telecommunications networks, both fixed and mobile, shall compulsorily execute reciprocal compensation arrangements for traffic, without any termination fee, including calls and short messages.

C. Infrastructure

The execution of agreements between the concessionaires for the collocation and for infrastructure sharing is encouraged, and shall also be registered with the Institute.

Once the concession has ended, the Federal Government retains the preferential right to acquire facilities, equipment, and goods used for the provision of services at a price previously set by the Institute of Management and Valuation of National Assets.

D. Authorizations

Authorization is required to: establish, operate, or use, a commercial telecommunications services that do not have the status of concessionaire; install, operate, or use land based stations to transmit satellite signals; install telecommunications equipment and means of transmission that cross the country's borders; avail oneself of the rights of transmission and reception of signals and frequency bands associated with foreign satellite systems that cover and can provide services within the country; and temporarily use spectrum bands during diplomatic visits.

02

Key Points

- Concessions are required in ordered to provide all types of public telecommunications and broadcasting services whose term can be renewed and extended for terms of 30 years. In the event that the use of radio frequencies or orbital resources is required, one must also obtain a concession for 20 years, which is also renewable. These concessions shall be issued according only to their stated purpose, be they commercial, public, private or social use, and shall only be awarded to individuals or corporations of Mexican nationality.

- The participation of foreign investment is permitted in broadcasting subject to whether reciprocity exists in the country where the investor or controlling economic agent is based.

- A concession for the use or exploitation of the radio spectrum for commercial or private use for purposes of private communication is generally awarded through a public procurement bidding process and the payment of the corresponding consideration.

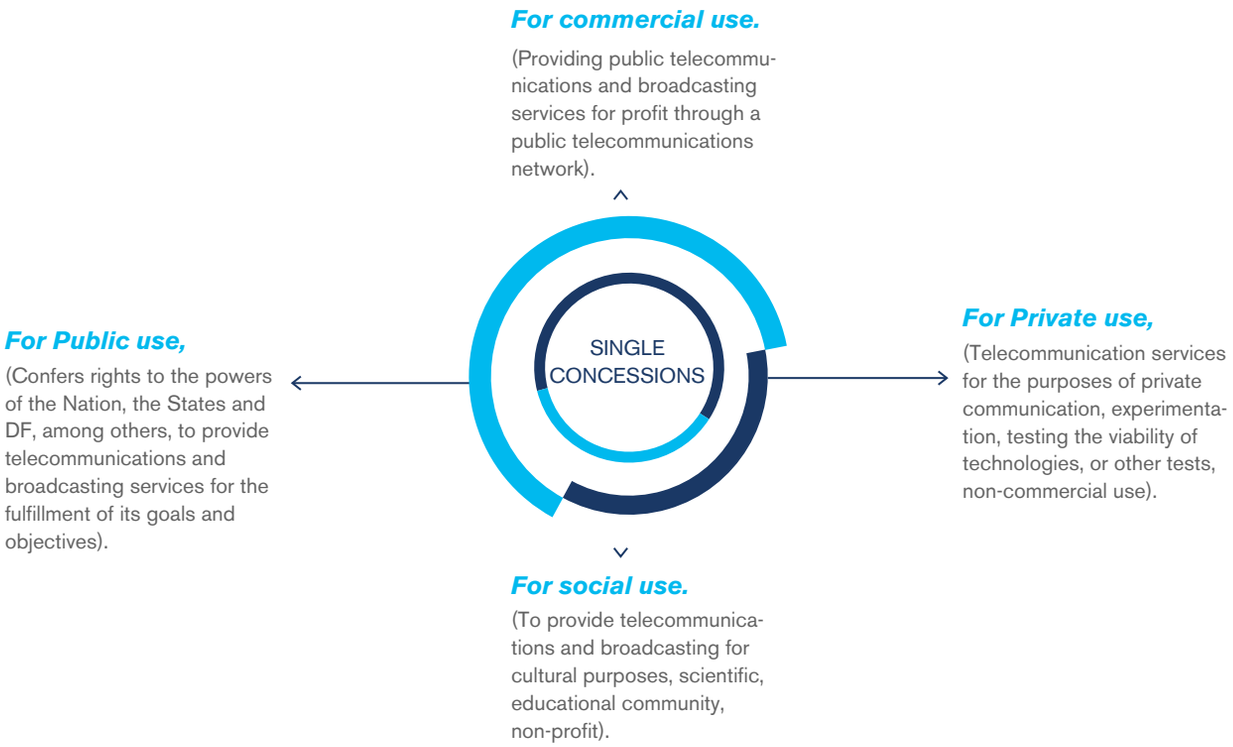
- Concessions relating to public or social use are granted through direct assignment for a term of up to 15 years.

- Only concessions for commercial or private use, the latter for the purposes of private communication, may be transferred with prior authorization from the Institute.

- Concessionaires of telecommunications services for commercial use must submit their proposed rates for registration by electronic application, prior to implementation, for approval of their user fees, so that the interests of users are protected.

- The law also regulates issues related to programming, content, and standardization of telecommunications and broadcasting equipment.

  The following diagrams show the types of concessions necessary to provide all types of public telecommunications and broadcasting services.


For commercial use.
(Providing public telecommunications and broadcasting services for profit through a public telecommunications network).
SINGLE CONCESSIONS
For Public use,
(Confers rights to the powers of the Nation, the States and DF, among others, to provide telecommunications and broadcasting services for the fulfillment of its goals and objectives).
For Private use,
(Telecommunication services for the purposes of private communication, experimentation, testing the viability of technologies, or other tests, non-commercial use).
For social use.
(To provide telecommunications and broadcasting for cultural purposes, scientific, educational community, non-profit).


For commercial use.
(Right to use, develop and exploit bands and orbital resources for profit).
CONCESSIONS ON THE RADIO SPECTRUM AND ORBITAL RESOURCES.
For Public use,
(Confers rights to the powers of the Nation, the States and DF, among others, to provide telecommunications and broadcasting services for the fulfillment of its goals and objectives).
For Private use,
(Right to use, develop and exploit bands and orbital resources for the purpose of:
a. Private communication; or
b. Experimentation, viability and testing, etc.).
For social use.
(Right to use, develop and exploit bands and orbital resources for cultural, scientific, educational, and/or community purposes, non-profit).

03

Recent Practice Experience

With the growing demand for interconnectivity, the sharing of telecommunication infrastructure has been and continues to be essential, but what happens when two concessionaires, each a concession holder authorized to install, operate, and exploit a public telecommunications network cannot reach an agreement on the terms and conditions applicable to the interconnection of their public telecommunication networks?

The basis for resolving these types of issues stems from the public's interest in these interconnections and infrastructure sharing; it is the obligation of concessionaires to adopt open architecture designs that allow for the interconnection and interoperability of networks and encourages the promotion of competition.

In a specific case, there was a notice from one concessionaire to another of a proposed agreement and estimated operating projections. If the negotiations had yielded positive results, the parties would have come to an interconnection plan that would then be reviewed and approved by the authority.

Unfortunately, in this case, the concessionaires could not reach an agreement and it was necessary to request that the Institute intervene and rule on the terms of interconnection through an administrative proceeding.

Once the application was presented, the other party was given the opportunity to express its position and offer evidence. There was a period of oral arguments, which was then followed by a resolution. Each party argued several aspects of their case, including: points of interconnection, interconnection and traffic rates, infrastructure sharing, and meanwhile the authority deliberated both sides of the case.

In the end, the authority decided in favor of allowing infrastructure sharing. It was specific on the point that interconnection rates should be set based upon costs, so as not to give advantage to market participants, and the Institute set specific rates per point and per minute of interconnection.

Additionally, a term was given for the parties to sign the respective agreement and to forward a signed original of the agreement to the appropriate authority.

As we have said before, we can conclude that the State recognizes that infrastructure sharing is a new and essential method for promoting effective access for the population to communications and consumer goods.

04

Frequently Asked Questions

1. **Is it possible to market public telecommunications networks through the acquisition by one concessionaire of rights from other concessionaires, and offer local telephone services in geographical areas other than the coverage area of the concession?**

   A: Yes, provided that (i) the concession holder allows it, otherwise the concession should be modified, and (ii) there is an agreement with the titleholders of the public networks who are authorized to provide such telecommunications services. The foregoing shall also be subject to the conditions set by the authority in that specific case.

2. **What process should be followed to ensure that the national authorities recognize that the specifications of equipment, of foreign origin, intended for telecommunications can be connected to a public telecommunications network or can utilize the spectrum?**

   The relevant entity or individual must follow the IFT approval process, after obtaining certification from the Official Mexican Standards corresponding to the authorized private entity.

3. **Who can apply for approval for the equipment?**

   The operators of telecommunications networks, also called concessionaires or distributors, provided they are registered in the country.

4. **Does the IFT have the authority to initiate reviews and issue a declaration of prevalence?**

   A: Yes, in the administrative process of prevalence, the IFT can determine the participation of an economic agent or operator with more than 50% participation in the industry. For determining this calculation the law establishes parameters such as: audience, users and subscribers.

   The IFT may impose specific obligations or a specific regulatory regime to promote conditions for competition.


GOODRICH'S
BLUE
BOOK
MEXICO

MINING

“Concessions for the exploitation and/or explorations are granted over free land to the applicant of a mining claim, as long as they meet the conditions and requirements of the Mining Act and its Regulations…”

GOODRICH
RIQUELME
ASOCIADOS

01

Introduction

The mining industry has been the most productive national sector in recent years, and has brought the most investment into the country.

In accordance with the aforementioned, Mexico is the largest silver producer in the world, and remains one of the largest global producers of gold (8th), lead (5th), bismuth (2nd), and copper (10th). The states of Zacatecas and Sonora are the largest producers of gold, silver, and copper in the country.

Most of the national silver production is located in the states of Zacatecas, Durango, and Chihuahua. Zacatecas and Chihuahua are the main producers of copper and zinc. The largest silver mine in the world, Fresnillo, is located in the state of Zacatecas, and represents 19.5% of the total silver production in Mexico according to the annual report of the Mining Chamber of Mexico in 2013 (CAMIMEX).

The states of Chihuahua, Durango, and Sonora are the largest gold producers in Mexico. By state, Sonora represents a 30% stake in production; Zacatecas, represents a contribution of 23%, and Chihuahua accounts for 17%, making up 70% of total production.

The major copper deposits in Mexico are located in the metallurgical province of the western Sierra Madre.

With respect to iron deposits in Mexico, these deposits are distributed over two mineral belts: The iron belt located in the northeast of Mexico and the iron belt located in the southwest of Mexico.

02

Key Points

- Regulation and Enforcement

  In accordance with Article 27 of the Constitution of the United Mexican States, the Nation has direct ownership of all natural resources located on the continental shelf. The use or exploitation of these resources, however, can be conducted by individuals or companies that hold concessions granted by the federal government, through a bidding process, which shall be published in the Official Gazette of the Federation, or through direct award.

  Furthermore, the Mining Law is responsible for such regulation, while their application falls under the purview of the Federal Executive branch of government under the Ministry of Economy.

- Holders of Mining Concessions

  Mining concessions may be granted to: (i) natural persons of Mexican nationality, (ii) Companies incorporated under Mexican law, (iii) agricultural communities, and (iv) Indigenous peoples.

  The concessions will be granted to any person that are proven to be in compliance with the requirements, and that arise from and are based in the best economic proposal, taking into consideration the monetary compensation for sale and purchase, and the premium for discoveries offered.

- Duration and extension of the Concession

  Mining concessions shall last for a term of fifty years, which is counted from the date of registration with the Public Registry, and which may be extended for a term of equal duration. Request for extensions should be made within five years prior to the expiration of the term.

- Rights conferred by Concessions

  Mining concessions confer, among others, the following rights

  - The right of owners to develop projects, to perform exploration work, and to exploit the mining claims.
  - Provide mineral products obtained in batches that are the result of these developed projects.
  - Obtain expropriation, temporary occupancy, or the creation of land easement necessary for conducting these projects, exploration works, and exploitation.

- Exceptions to the bidding process

  Contracts for exploration and exploitation may be awarded directly, without the need for a tendering procedure, to holders of mining concessions solely for the exploration and exploitation of natural gas contained in coal seam and produced by the same. To this end, dealers must prove that they have sufficient funds and technical, administrative and financial capacity.

- Royalty payment

  The holders of concessions and mining allotments shall pay the following:

- On Mining

  Semiannually, for each hectare or fraction granted in the concession or assigned, for the rights to mining, according to the following fee structure:

MINING CONCESSION	FEE PER HECTARE (PESOS)
During the first and second year of operation	$6.41
During the third and fourth year of operation	$9.58
During the fifth and sixth year of operation	$19.81
During the seventh and eighth year of operation	$39.85
During the ninth and tenth year of operation	$79.68
From the eleventh year of operation.	$140.23

- Extraordinary royalties on mining

  The extraordinary royalties on mining shall be paid annually at the rate of 0.5% on the revenue generated from the sale of gold, silver, and platinum.

- Additional royalties

  Addition royalties shall be payable at a rate of 50% over the quota stipulated by concessions that remain unexplored or undeveloped for two consecutive years.

- Special royalties

  The special royalties shall be paid annually at a rate of 7.5% on the positive difference resulting from decreasing of revenue arising from the transfer or sale of the mining activity.


PAYMENTS OF RIGHTS
I. Over Mining
II. Extraordinary rights over mining
CONCESSION HOLDERS
I. Individuals of Mexican Nationality
II.Companies incorporated under Mexican Law
III. Agricultural Communities
RIGHTS
Projects, exploration work and exploration of the mining claims.
DURATION AND EXTENSION
50 Years, extenable for a term of equal duration
EXCEPTIONS TO THE BIDDING PROCESS
E&E on Natural Gas contained and produced in coal seams

03

Recent Practice Experience

Our firm has advised various companies on the process of obtaining mining concessions as well as in corporate, tax, and environmental issues related to mining.

Our firm recently provided legal advice for the financing of projects such as the acquisition of loans for mining developments. These loans were intended to finance mining within an area that is made up of certain mining concessions in the state of Zacatecas, as well as the construction and development of processing plants, investment in nearby roads, purchase of transport equipment, machinery, and specialized equipment for the exploitation of minerals.

04

Frequently Asked Questions

1. Who may hold mining concessions?

- Individuals of Mexican nationality
- Ejidos and agrarian communities
- Indigenous peoples and communities
- Companies incorporated under Mexican laws

2. What are the requirements for being legally considered a company incorporated under Mexican law?

- Having as its corporate purpose the exploration and exploitation of minerals subject to the regulations of the Mining Law
- Having their headquarters in Mexico

3. How long may a concession be granted?

Mining concessions shall have a duration of fifty years, counted from the date of registration with the Public Registry of Mining, and may be extended for an equal term if their holders do not incur any grounds for cancellation, and request such an extension within five years prior to expiration of their term.

4. What are the royalty payments to be paid by holders of mining concessions?

Pursuant to the Federal Law, concession holders must pay the following royalties:

- Mining royalties
- Extraordinary royalties on mining
- Additional royalties
- Special royalties

5. What is the process for the award of a concession?

As a general rule, the bidding process is announced through a public notice made by the Ministry of Economy and published in the Official Journal, in which the bidding rules are included. The concessions will be granted to those who fulfill the legal and economic requirements, specified in the technical bases, and also takes into consideration monetary compensation for sale and purchase, and the premium for discoveries offered.

As an exception to the above rule, contracts for E&E may be awarded directly to the holders of mining concessions exclusively for E&E activities of natural gas contained and produced in a coal seam.

Sites of Interest (in Spanish):
http://www.inegi.org.mx/inegi/contenidos/notasinformativas/ind_miner/NI-IM.pdf
http://www.siam.economia.gob.mx/es/siam/p_2014

HYDROCARBONS

“Mexico´s energy sector is experiencing it deepest and most radical change in the country´s history …”

GOODRICH
RIQUELME
ASOCIADOS

01
Introduction

The constitutional reform published in December 2013 was aimed at opening up the hydrocarbons industry to private investment, with parties functioning as agents of Pemex and exclusively conducting exploration and extraction activities.

Although this type of investment and involvement is categorized as strategic, this particular type of investment is not an obstacle under the Mexican Constitution. However, as a result, the regulation of these activities is reserved to the Mexican State and it is under these terms that Contractors and Assignees perform these activities for the State.

In the August 2014 in secondary legislation the powers of regulators were reorganized, and the scope of the regulation applicable to the Midstream (related transportation and distribution through pipelines and storage, and the marketing of hydrocarbons), Upstream (recognition, exploration, and production) and Downstream markets (refining and processing of oil, natural gas processing, and the sale to the public) are now open to the social and private sectors.

In that respect, the Hydrocarbons Law expressly reaffirms and regulates that activities of recognition and surface exploration, as well as activities related to the treatment, refinement, sale, marketing, transport, and storage of hydrocarbons can be developed and carried out by Pemex and by any other productive State enterprise and private companies through the issuance permits or authorizations, as appropriate, which are issued by the relevant authorities prior to their execution.

It should be noted that exploration activities are not limited to the development of certain, determined activities, and in that respect the Hydrocarbons Law currently considers exploitation of those activities can be conducted through certain direct methods that are aimed at the discovery and evaluation of the subsurface of hydrocarbons in a specific area.

02

Key Points

- The reforms envisage the transformation of Pemex from a parastatal company to a productive State enterprise, which is wholly owned enterprise of the Federal Government, imposes a special system of compensation, acquisitions, leases and deeds, among others, and is regulated in part by its own laws and regulations, and on a supplementary basis by commercial and civil law, and may participate in such bids either individually or through partnerships, on equal terms with other specialized companies.

- The exploration and extraction activities must be conducted through Pemex, taking into account the allocation figures (subject to subsequent mining and exploration contracts), and through the granting of contracts, through public bids, through modalities of services, or through utility or production sharing and licenses, under a new tax system whose implementation and monitoring corresponds to the authority of the SHCP.

- Broadly speaking, the energy laws provide that it is the purview of the Ministry of Energy (SENER) to establish, conduct, and coordinate energy policy, allocate assignments and select areas that are covered by said contracts, establish the design and technical guidelines to be observed during the bidding process, with technical assistance from the CNH. With respect to the regulatory environment, SENER is in charge of granting permits for the treatment and refinement of petroleum and natural gas processing, as well as the import and export of hydrocarbons, under the terms of the Federal Trade Law.

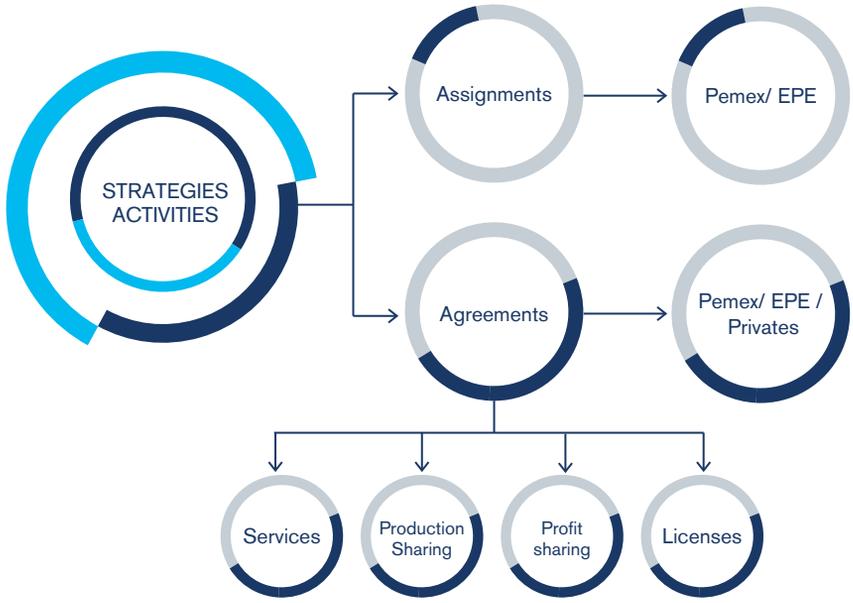
- Meanwhile, the National Hydrocarbons Commission (CNH) is primarily and mainly authorized to approve services for recognition and surface exploration; holding bids, assigning bid winners, and signing contracts for the exploration and extraction of hydrocarbons in any physical state; managing the technical assignments and contracts; monitoring plans to maximize extraction fields, and issuing the associated regulations. Moreover, the reforms also foresee the creation of the Petroleum Monetary Fund in order to manage the proceeds of the new contractual regime and be responsible for distributing payments between the parties, that is to say, between the State and the Contractors.

- Midstream activities are regulated by the Energy Regulatory Commission (CRE), and have been reorganized and expanded to incorporate the permitted regime of said regulator, the transportation, compression, decompression, regasification of natural gas, sale to the public, as well as the marketing of hydrocarbons. Similarly, the new legal framework incorporates and strengthens principles such as open access and the supervisory powers of the available capacity by the regulator, as well as Vertical Integration, by promoting the first and limiting the second, for effective access by the users and for market development.

- It should also be mentioned that the reforms strengthen the existence of the Integrated Systems of Natural Gas by creating less ambiguous regulation, with the possibility of voluntarily incorporating transport and storage licensees through the use of pipelines. Another important aspect of the reform is the creation of CENAGAS, which is an independent manager and administrator of the newly formed National Integrated System of Transport and Storage (formerly the National Pipeline System under the purview of the PGPB),

which includes projects whose characteristics are defined by SENER as strategic, and are subject to the bidding process.

- Similarly, the powers for protecting the environment and people working within the hydrocarbons sector were distributed over different laws that have been now repealed, are now consolidated under the authority of the Agency for Energy and Environmental Security (ASEA), who is responsible for regulating them under the terms of Industrial and Operational Security through an Administration and Management System approved by that agency for any activities related to Industrial Hydrocarbons.



03

Recent Practice Experience

In the awarding of contracts for the exploration and extraction of hydrocarbons, GRA assists international companies in accessing the Data Room, Registration in the bidding process, and during this process assisting in the integration of consortia and the signing of the Production Sharing Contract of the First Convocation of the Bidding Process during the First Round (and in the other stages of this round), a process in which, in accordance with international practices, the rules of engagement have been relaxed.

An example of this is the possibility that the CNH grants approval so that an Operator in a Grouped Bid can also participate as an Individual Bidder, but can remain as Operator in Grouped Bid without having to present individual proposals in the same Contract Areas in which the consortium is participating.

Similarly, the CNH removed the restriction in which a consortium in which the Operator that has the highest participation, with the possibility of having financial partners finance the exploration and extraction projects, has to offer greater participation to the State.

With respect to the minimum work commitments, for the purpose of providing greater security to investors, the monetary regime for measuring these commitments was modified by the Working Units, i.e., a percentage value is assigned to each of the activities which form part of the exploration and extraction contract (drilling, seismic, production testing, among others).

With respect to Midstream activities, our firm advises our clients on the regulatory aspects of the construction, commissioning, and launching of projects for the Transportation and Storage of Natural Gas and Petroleum, as well as the processing of permits for these activities, which involves the analysis of the new regulations on Minimum Percentage of National Content that such projects should now be in compliance with, as well as aspects related to public consultation, in which notice of initiation and processing of permits must be submitted to the Ministry for Development of Agricultural and Urban Territory (SEDATU) in accordance with the Hydrocarbons Law.

Likewise, we participate in projects for the Transportation and Storage of unprocessed Petroleum for the purpose of defining those areas in which transportation activities are required, and to which administrative provisions and regulations are applicable. CRE recently requested the opinion of the Federal Commission for Regulatory Improvement (COFEMER), and subsequent to the publication in the Official Gazette of the Federation (DOF), we have analyzed and considered suggestions with respect to the procedural requirements for the necessary and corresponding permits.

Those provisions provide for the addition of new services to be provided by potential licensees, such as the Service for Common Use, once established by the CRE, and as presented to COFEMER, shall provide greater flexibility to users who do not have contracts, allowing them to apportion capacity on either transportation or storage systems.

It should be noted that the administrative arrangements are based on the regulation issued previously by the CRE on Natural Gas, taking into consideration the same established tariff scheme, based on service charges and the use of the system in question.

04

Frequently Asked Questions

1. **What are the various types of bid participations that are currently conducted by the CNH?**

   Companies may participate as either an Individual Bidder or as a Group Bidder.

2. **What requirements must be met in the bidding procedures in order to participate as a prequalified bidder?**

   Applicants must: (i) be registered in the bid, (ii) make an appointment within the period established for this purpose, and (iii) meet the technical, and financial requirements, as well as demonstrate experience and capacity for implementation, as established by the CNH.

3. **What are the steps of the bidding process that are followed for the award of contracts?**

   - Publication of the Notice of Convocation and of the Bases;
   - Access to information in the Data Room,
   - Registration to Bid;
   - Clarification Stage;
   - Prequalification;
   - Introduction and opening of Proposals;
   - Decision on and Award of the Bid, and
   - Conclusion of the agreement, and signing of the contract.

4. **In which cases may the bid be declared defective or void?**

   CNH may declare defective or void all or part of the bid when:

   - No proposals were submitted;
   - Stakeholders do not meet the requirements requested during Prequalification stage, or
   - All proposals will be rejected.

   CNH will issue a statement explaining why the bid was unsuccessful.

5. **What are the types of contracts that may be awarded?**

   - License
   - Production Sharing
   - Shared Utility
   - Services

6. **Can the CNH refrain from entering into contracts for exploration and extraction?**

   Yes, in the following cases:

   - Companies who are disqualified or barred by the relevant competent authority from contracting with federal authorities;

- The company has committed a serious breach or has a breach that is pending resolution with respect to contracts for exploration and extraction that have been previously awarded;
- A company utilized third parties to evade the provisions of the Hydrocarbons Law and other applicable regulations;
- A company presented false or incomplete information on more than one occasion;
- Contracts issued by the CNH for these purposes may also provide additional reasons for refusal, apart from the above-mentioned reasons.

7. With the existence of the ASEA, does the CRE disclaim supervision over security in the construction and operation of the permitted systems?

No, in accordance with the Hydrocarbons Law, CRE shall remain aware of those incidents that take place and likewise, under the same terms of the Law, the Commission shall not issue permits unless regulators are shown demonstrable evidence indicating that the design facility meets the minimum standards for security.

8. In the case of construction of a new pipeline or pipeline, in which the construction of an additional tranche is necessary, and which was not part of the original project permit of the applicant, can the authority require a modification of the project and extend it to a determined point to accommodate for the necessity of the supply?

In accordance with the Hydrocarbons Law, in order to increase the supply of hydrocarbons, the CRE will require applicants to extend the trajectory of the project, where this is technically and economically feasible.

9. According to the new rules on Open Access, may the regulator require licensees to provide services when the capacity is contracted, but is not being used?

Indeed, the CRE may force licensees to provide services, and not only that, the Hydrocarbons Law also requires Users to make unused capacity available to third parties on the Secondary Capacity Market. Moreover, CRE has been granted the authority, through third parties, to check the available capacity of these systems.

10. With respect to the elements for determining the maximum rates applicable, can a company introduce additional expenses, investments, and services in addition to those approved by the CRE, for recovery in this manner?

This is possible insofar as the CRE may determine that these expenses, investments, and services, are specific to the service in question, and do not correspond to other bundled services.


GOODRICH'S
BLUE
BOOK
MEXICO

REAL ESTATE AND TOURISM

“To determine the feasibility of the acquiring of real estate by foreigners in national territory, one must take into account territorial criteria...”

GOODRICH
RIQUELME
ASOCIADOS

01

Introduction

Foreign investment is vital for economic development in our country. It is for this reason that Mexico should promote the growth of real estate transactions in the country, for either commercial, industrial, or tourism purposes.

To determine the feasibility of the acquisition of real estate by foreigners in national territory, one must take into territorial criteria, because of the existence of two major categories. The first categories involves the limitations established under the Constitution of the United Mexican States, the Land Law, and the Foreign Investment Law regarding the acquisition of agricultural, livestock or forest lands; and the second category involves the existence of so-called restricted area.

With respect to this first point, we must take into consideration that the above cited laws categorize rural land into three different types: (i) agricultural property, defined as that which is chiefly used for the cultivation of various plants and fruit trees, and which limits small individual property to between one hundred and three hundred hectares, under the general rules; (Ii) livestock owned by an individual not exceeding the area necessary to maintain up to five hundred heads of cattle or the equivalent in small livestock; and (iii) ownership of forestry, the ownership of surface area of forest land of any kind not exceeding eight hundred hectares. The importance of reviewing whether land is classified as agricultural, livestock, or forest land, is that the commercial or civil companies that acquire this land shall issue a special type of “T Series” shares, which shares that represent the value of property contributed to such companies or capital contributed for the acquisition of such lands. The ownership of T Series shares is limited to a maximum of 49% for foreign investment.

Regarding the second category, Article 27 of the Constitution of the United Mexican States establishes that foreigners may acquire direct ownership of real estate outside of the restricted area, and may acquire indirect ownership within the restricted area through the establishment of a trust or through the participation in a Mexican company with a foreigners’ admission clause.

02

Key Points

- The acquisition of agricultural, livestock and forestry land by a corporate and civil society, cannot be greater than the equivalent of twenty times the limit of small individual property, regardless of whether or not that company involves any foreign investment. If the company involves foreign investment it shall apply the limits established under the Land Law and the Foreign Investment Law regarding Series T share ownership, as foreign investment at no time may exceed 49% of those type shares.

- Foreigners can buy property outside the restricted area, provided they reach an agreement with the Ministry of Foreign Affairs to be considered and treated as nationals with respect to such property, and therefore not invoke the protection of their governments in relation thereto; in case of noncompliance with this agreement, the penalty may be the forfeiture of the land to the State, in addition to the forfeiture of property acquired thereon (Calvo clause).

- The ownership of ejido (commonly-owned) land belongs to the ejidal population or ejido (agrarian groups,) an because of this majority of projects require that their use and enjoyment are made through the execution of contracts (lease) or construction of long-term real rights (usufruct), and are subject to the established limits set by the legal systems for these ejidos. The parcels of land are subject to adoption of a freehold estate, subject to the fulfillment of various requirements established under the applicable land legislation, and once full control is taken, they become regulated by civil legislation.

- There are limitations regarding ejido land, depending on the type of land concerned. In this type of land three categories are recognized: land for human settlement; land for common use, and parcels of land. In this type of land it is important to consider the type of land concerned, since the development of a commercial, industrial or tourism project, can only involve common use lands and parcels of land, in compliance with the requirements as established under the Land Law and other applicable provisions, and in which - in most cases - only the long term use and enjoyment of such land can be acquired.

- For special uses over common use lands, such as ZOFEMAT concession, authorization or permission is required, and these are awarded to both nationals and foreigners, but in the latter case they shall be subject to the provisions of the Foreign Investment Law.

- The ZOFEMAT is common use property asset of the Federation, and in the case of hotel resort development located in beach area, it consists of the twenty meters wide strip of land, walkable areas directly adjacent to these beaches or, in the case of rivers, along the banks of the rivers, from the mouth of the river at the sea, up to one hundred meters upstream. This strip of land is not subject to acquisition of individuals and their demarcation and delimitation is the responsibility of the Ministry of the Environment and Natural Resources (SEMARNAT). The beaches, the ZOFEMAT, and reclaimed land from the sea, or any other deposits that form in marine waters are the public property of the Federation and have the characteristics of being inalienable and imprescriptible.

The following diagram establishes the prohibitions and restrictions for the acquisition of the property both within and outside the restricted zone:

FOREIGN INVESTMENT - ACQUISITION OF REAL PROPERTY WITHIN MEXICAN TERRITORY				
APPLICABLE LEGISLATION Political Constitution of the United Mexican States, the Foreign Investment Law and applicable Regulations.				
DIRECT OWNERSHIP		INDIRECT OWNERSHIP		
Within the Restricted Zone PROHIBITED	Outside of the Restricted Zone PERMITED	Within the Restricted Zone PERMITED		Outside of the Restricted Zone PERMITED
	Foreign Individuals or companies may acquire property. Parties must file a notice with the Secretary of Foreign Affairs That letter should agree with the provisions of Article 27, Section I of the Constitution.	Formation of a Mexican company without a foreign exclusion clause. NOTE: The property must not be intended for residential purposes.	Formation of a Trust. NOTE: The property can be used for any destination or purpose. Credit institutions acting as trustees, rights to real estate located in the Restricted Zone, a permit from the SRE is required	It may occur through the formation of a Mexican company without a foreigner exclusion clause, or through the formation of a trust.

03

Recent Practice Experience

Our firm has excelled over the years in representing various companies in the development of tourism and real estate projects, comprehensively advising our clients in advancing their implementation plans or expansion into the country.

In recent practice, our firm had the opportunity to advise a tour company on issues related to the Federal Maritime Land Zone (ZOFEMAT), in which company “A”, whose main purpose involves real estate activities, acquired a property adjacent to the Federal Maritime Land Zone (ZOFEMAT) and was granted concession for the use and exploitation of ZOFEMAT from the Ministry of the Environment and Natural Resources (SEMARNAT). However, he company “B”, whose main business is in the operation of tourist activities, is the company that operated the hotel development that was built on the property acquired by company “A”.

Such use of a third party (company “B”) without authorization of the SEMARNAT, is considered a cause for revocation of the concession in accordance with the regulations governing the ZOFEMAT.

Therefore, the companies had to perform various steps in order to prove that both the company “A” and company “B” belonged to the same corporate group in order to avoid the revocation of the concession.

If it was decided that they exists as two companies belonging to the same corporate group, one company involved in real estate issues and the other involved in the operation of resorts, it is sensible to request from SEMARNAT a concession for the use and exploitation of ZOFEMAT on behalf of both companies. Furthermore, it is also recommended that before undertaking any work on the ZOFEMAT a company should gain authorization from SEMARNAT, otherwise the works or installations that are carried out without concession ZOFEMAT may be forfeited to the State, with the issuance of a judgment obtained in favor of SEMARNAT, and the Ministry could order its demolition.

04

Frequently Asked Questions

1. **Can the limits regarding the participation of foreign investment with respect to the issuance shares or of Series T shares be increased through the formation of trusts?**

   The limits on foreign investment participation regarding the issuance of Series T shares, may not be increased directly or through trusts, agreements, social or statutory pacts, pyramid schemes, or any other mechanisms granting greater control or participation to that established, except as provided for with respect to Neutral Investment.

2. **Are concessions granted by SEMARNAT for the use and exploitation of ZOFEMAT transferable?**

   The transfer of rights of concessions for the use and operation of the ZOFEMAT themselves are assignable, but such assignment must be approved by SEMARNAT who can authorize so long as there is full compliance with the requirements established in the regulations that govern the ZOFEMAT.

3. **Is the authorization for formation of real estate trusts involving land or property located in the restricted area at the discretion of the Ministry of Foreign Affairs?**

   In general, authorization to establish such trusts is considered discretionary, however, the applicable Regulations of the Foreign Investment Law and the National Registry of Foreign Investment, establish many areas in which, with compliance of the legal requirements, permission must be granted, namely for industrial parks, housing developments, hotels, industrial buildings, shopping centers, research centers, tourism developments, marine tourism, among others, which are considered important for the development of the national economy.

4. **Can the ejido lands, considered as Common Use, be the object of contracts aimed at the use or enjoyment by third parties?**

   Yes, as long as those lands are properly defined, and the ejido assembly approves the execution of the respective contract.

ELECTRICITY, THE WHOLESALE ELECTRIC MARKET, AND RENEWABLE ENERGY

"The Mexican electricity market has been liberalized, and as a result, opportunities have opened up for private investment in generation projects, in supply, and for the marketing and sale of electrical power to third parties..."

GOODRICH
RIQUELME
ASOCIADOS

01

Introduction

As a result of the Energy Reform, the electricity sector in Mexico is experiencing great changes. Previously, the electricity service in Mexico was a public service run exclusively by the Federal Electricity Commission (CFE), and individuals could only participate in the generation of electricity under certain conditions.

Presently, the Mexican electricity market has been liberalized, and as a result, opportunities have opened up for private investment in generation projects, in supply, and for the marketing and sale of electrical power to third parties. Although transmission and distribution activities remain, and will remain, strategic areas reserved to the State, and as such, ownership of transmission lines and distribution will continue to belong to CFE, individual participation in these activities will be allowed through the execution of specific contracts and through partnerships with CFE.

The Mexican electricity market has two segments: (i) the market for basic users who buy energy from Basic Suppliers based on a regulated rate; and (ii) the market for Qualified Users who buy energy from Qualified Suppliers, and which purchase is fixed freely between the parties, or in the Wholesale Electricity Market (MEM). Qualified Users are required to comply with certain levels of demand and must be registered with the Energy Regulatory Commission (CRE). If you want to buy directly through the MEM, users must have additional registration with the operator of the MEM, the National Center for Energy Control (CENACE).

The purchase and sale of electricity, related services, and issuance of Clean Energy Certificates (CELS) is carried out through the Wholesale Electricity Market (MEM). Generators, Suppliers, Traders, and Qualified Users may participate in the MEM prior registration with the National Center for Energy Control (CENACE) as a market participant. The MEM will operate through a Day-Ahead Market (spot price) and a Real-Time Market for energy and related services; a power market; a market of CELs; Medium and Long Term Auctions of Bidding; and Auctions and Bids for Financial Transmission Rights.

Generators may execute Electricity Coverage Contracts with off-takers (Power Purchase Agreements, PPAs) for the purchase and sale of electricity with other participants in the market. In light of the foregoing, the goal is to diversify the generation, supply, and marketing of electrical power in Mexico so that the electricity sector is more efficient, and consumers are offered lower and more competitive rates.

The Energy Transition Law (LTE, for its acronym in Spanish) was published in December 2015. LTE represents the last piece of the 2013 energy reform. Its purpose is to regulate sustainable energy use, energy efficiency, clean energy obligations and reduction of greenhouse gas (GHG) emissions from the Power Sector in Mexico. In this regard, LTE seeks to promote the use of Distributed Generation Schemes, smart grids, substitute inefficient equipment, amongst the implementation of other strategies to achieve national goals for reduction of GHGs emissions, energy efficiency and use of clean energy sources. The goals for participation of clean energy sources in power generation are the following: 25% by 2018; 30% by 2021 and 35% by 2024. Thus, there are several investment opportunities for the development of renewable energy projects in Mexico.

02

Key Points

- The new electricity market regime has opened the door to involvement by private companies for the generation, supply, and sale of electricity in Mexico. Generators, suppliers, Qualified Users that are market participants, and commercial entities have the option of participating in the MEM in order to conduct purchases and sales of electricity, related services, power, import and/or export of electricity, financial transmission rights and CELs.

- The Electrical Industry Law ("LIE") and its corresponding regulations indicate that the activities of generation, supply, transmission, distribution and supply of electricity must be made independently, and under strict legal separation. That is to say, a generator cannot conduct activities related to the supply and delivery of electrical energy and vice versa, but they can conduct these activities if a generator and supplier belong to the same group of companies.

- Generators that have power plants with a capacity that is greater than or equal to 0.5 MW must obtain a generation permit issued by the Energy Regulatory Commission ("CRE"). If the power plant has a capacity lower than 500 kW, a generation permit will not be required for that plant to operate because they are considered exempt generators.

- A generation permit may be requested in general form or in specific form for isolated supply for on-site consumption. Power plants that use part of their production for purposes of isolated power generation may be interconnected with the National Transmission Network ("RNT") or General Distribution Network ("RGD") for the sale of surplus supply, and for the purchase of any energy shortage for energy that will be consumed on-site, and for surpluses or shortages that may be sold or purchased on the MEM. Another form of power generation is called distributed generation, which is performed by an Exempt Generator (capacity lower than 500 kW) which is a power plant interconnected to a distribution circuit with a high concentration of circuit breaker panels.

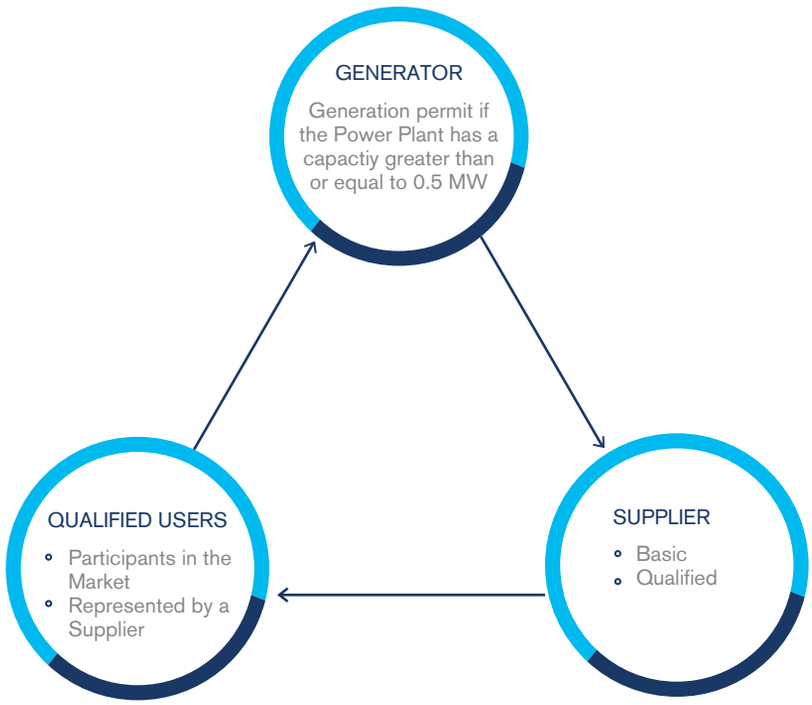
- Participants in the MEM must execute a contract with CENACE, in any of the following ways:

  a. Generator;
  b. Energy Generation Brokers;
  c. Qualified User:
     i. Qualified Users that are market participants.
     ii. Qualified Users represented by a Qualified Supplier in the MEM.

- Suppliers should obtain permission from the CRE in the following categories: Basic (CFE), Qualified (Qualified Users), and of Last Resort.

- Participants in the MEM may participate in Medium (SM) and Long Term (SL) Auctions to purchase Electricity Coverage Contracts (PPAs) for electricity, power, and CELs. Medium term contracts have a duration of 3 years for power and energy, while long term contracts have a duration of 15 years for energy and power, and 20 years for CELs. Additionally, participants may enter into PPAs for the sale of electricity or related products at a future and determined hour or date, or by setting prices based on an agreed upon price.

- With respect to the transmission and distribution of electricity, CFE may enter into contracts with individuals for the installation, maintenance, operation and expansion of the RNT and RGD.



03

Recent Practice Experience

Our firm has provided legal services at all stages of development and implementation, as well as providing advice in the sale and acquisition of energy projects. Our experience ranges from the preparation of legal strategies for project development, the negotiation of contracts for lease, usufruct, servitude, and rights of way, the obtaining of required licenses, resolutions, and permits from the applicable authorities, such as the CRE, CENACE, and CFE, to the preparation of Electric Energy Supply contracts (PPA).

A recent project involved a partnership between a Mexican company and a company from the United States for the development of a project for providing over 250 MW in photovoltaic energy in Mexico under a system of distributed generation. Our involvement included providing legal advice at all stages of the partnership, from the structuring and negotiation of partnership to the development of the Joint Development Agreement (JDA), EPC contracts, and PPAs for the long-term sale of energy to potential customers. Likewise, we performed a due diligence during the negotiation process between these companies to identify all relevant legal aspects.

Our firm has also worked on the structure and development of landfills in Jalisco and Guanajuato for generating electricity by harnessing biogas, in which concessions and permits were originally obtained under the old regime under a model of self-sufficiency. Our collaboration in the project included the preparation of PPAs for the sale of electricity from these projects, usufruct contracts, and rights of use of the harnessed biogas, as well as Shareholder Agreements.

Currently, we support a future Qualified Supplier in the new electricity market.

04

Frequently Asked Questions

1. **Can a generator simultaneously engage in activities involving the Supply Electrical Energy?**

   No. The LIE (Electrical Industry Law) establishes that the generation, transmission, distribution, and sale of electricity shall be carried out independently of each other and under conditions of strict legal separation. However, a generating entity and supplying entity may belong to the same group of companies.

2. **What are the components of the MEM?**

   - Day-Ahead Market and Real Time Market for energy and related
   - services;
   - Power Market;
   - CELs Market;
   - Medium Term Auctions for energy;
   - Long-Term Auctions energy, clean energy, and CELs;
   - Financial Transmission Rights Auctions.

3. **Who has the obligation to acquire CELs and many CELs can be acquired?**

   Suppliers, Qualified Users that are market participants, End Users who receive power from an isolated supply, and holders of Interconnection Legacies Contracts may acquire CELs. SENER will establish the requirements for the acquisition of CELs according to the proportion of the total electricity consumed.

4. **Who can participate in the activities of Transmission in the RNT and RGD?**

   CFE is responsible for providing transmission and distribution services and may execute contracts or partnerships with individuals for financing, installation, maintenance, management, operation and expansion of the infrastructure that are required for providing Transmission and Distribution Services.

5. **To whom can a generator sell electricity?**

   A generator can sell its electricity on the MEM to other Participants in the Market, including to Qualified Suppliers, Qualified Users that are market participants, as well as commercial entities. Additionally, they may also sell energy on the Day-Ahead Market at a spot price, or through medium and long-term auctions for Subscription Contracts.

GOODRICH'S

BLUE BOOK

MEXICO

IMMIGRATION

The legal status of foreigners in Mexico is safeguarded by legal mechanisms enacted by the Ministry of the Interior, through the National Immigration Institute (INM)…

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01

Introduction

Upon the effective date of the new regulation on immigration matters starting as of November 9, 2012 (Immigration Law (Ley de Migración) - hereinafter the Law - and the Regulation of the Immigration Law, herein the Regulation and pursuant to the publication of several guidelines, criteria, and circular letters applicable to such subject, we would like to comment on the most relevant aspects of corporate immigration in Mexico.

For purposes of the Law, "status of stay is [understood as] the regular situation in which a foreigner is, according to his intention of residence and, in some cases, according to the activity that he/she will perform in the country or, according to humanitarian criteria or international solidarity", as set forth in the 3rd article of the Immigration Law.

Such concept defines the three statuses of stay that allow the entry to the country in favor of foreigners based on the motive and the activities to be performed in Mexico (article 52 of the Law in question):

- Visitors
- Temporary Residents
- Permanent Residents

Within the immigration status of visitor, the following modes are set forth:

- Visitor without Permit to perform Activities with Compensation. Applicable to foreigners who desire to stay in national territory for a term not greater than 180 days, for any reason that does not imply financial remuneration.
- Visitor with Permit to perform Activities with Compensation. Applicable to all foreigners retained by a Mexican company for a term not greater than 180 days.
- Regional Visitor. Applicable to foreigners from neighbor countries who desire to stay in Mexico for a term not greater than 3 days.
- Boarder Worker Visitor. Applicable to such foreigners from neighbor countries that share territorial limits with Mexico, who intend to stay in Mexico for a term not greater than a year.
- Visitor with Humanitarian Reasons. Applicable to those who have been victims or witnesses of a crime committed in Mexico, minors not accompanied by an adult, and those seeking political asylum, the status of refugee, or the complementary protection of the Mexican Government.
- Visitor with Adoption purposes. Such status authorizes foreigners linked to an adoption proceeding, to stay in the country until a judgment is rendered and all necessary administrative procedures are filed and carried out.
- Temporary Resident. Applicable to every foreigner who wishes to stay in Mexico for a term greater than 180 days, either because of work, study, or family unity.
- Permanent Resident. This status authorizes foreigners to stay in the country indefinitely and to obtain a remuneration in case of having a job in Mexico.

02

Key Points

- Certificate/Proof of Employer's registration.

  It is a prerequisite for the receipt and resolution of immigration procedures linked to legal entities and individuals with business activities (actividad empresarial) that/who have or retain foreign staff; therefore, it is essential that employers apply for and obtain such certificate/proof from the National Immigration Institute (Instituto Nacional de Migración, INM).

  The proof/certificate of employer's registration allows the employer to prove its legal capacity and powers, as well that the company is operating on an ordinary basis; in such way that subsequent filings and procedures will only require to submit the certificate/proof updated for purposes of proving the legal personality and powers of the legal representative.

- Visa by Employment Offer/Exchange.

  It is applicable to the foreigner to whom an individual or legal entity legally established in Mexico makes him/her a job offer. It is important to point out that in order to hire foreign staff or making a job offer to foreigners, individuals and legal entities who hire them must have the certificate/proof of the employer's registration issued by the Institute.

  This procedure only applies when there is a job offer for foreigners who intend to entry under the following status of stay:

  Visitor with permit to perform activities with compensation, when the employment requires a temporality not greater than 180 days.

  Temporary resident, when the employment requires a temporality greater than 180 days.
  This Visa by employment offer may be requested with the INM and not necessarily in the consular offices, as set forth in article 41 of the Immigration Law.

- Permission to Work

  The work permit is the result of an approved procedure for the Visa by Employment Offer; the INM grants the authorization to the foreigner to perform activities with compensation in national territory.

  The work permit is granted for the relevant job based on the classification of the National System of Jobs Classification or the classification that replaces it. For purposes of these Guidelines, the term job is understood as the set of tasks and duties performed by a person or that are foreseen to be performed for an employer.

  The work permit or the granting of a status of stay that entails to perform activities in exchange of a payment, does not imply validation of certifications, licenses, degrees, permits, consents or similar ones, or authorization by the migration authority on the level of competition or ability that the foreigner requires to perform the activities that the employer offers.

- In the event of Changing Status to Temporary Resident for Family Unity.

  Once the Temporary resident visa is issued, the immigration permits in favor of the family may be requested; there are two possibilities to obtain the status of stay of temporary resident for family unity.
  Before the entry to the country, when the interested party or holder receives his/her Mexican visa with work permit from the Consulate of Mexico, the visa for family reunification may be requested directly with the Consulate.

  As to family dependents, the change of status of stay for family reunification is allowed. Once the interested party receives his card of temporary resident from the INM, a change of the status of stay for the family dependents who are already in Mexico as tourists may be requested.

- Term of immigration Cards

  1 year for the card of temporary resident student, visitor with adoption purposes, or visitor with humanitarian reasons.
  180 calendar days for the provisional document.
  1 year for the card of temporary resident or, two or three years in case of continued employment for an equal period (maximum term of four years).
  1 year for the card of temporary resident or permanent resident with respect to children under the age of three.
  4 years for the card of permanent resident as to foreigners between the age of 3 and 15.

  In the event of Changing Status to Permanent Resident

  The status of permanent resident will be granted to foreigners in any of the following cases:

  - For motives of political asylum, acknowledgement of status of refugee, and complementary protection; or as a result of determining the status of being stateless, previous compliance with the requirements set forth in this Law, in its Regulation, and all other applicable legal provisions;

  - Due to the right to the preservation of the family unity in the cases and scope of article 55 of the Law;

  - If they are retirees or pensioners who receive from a foreign government or from international bodies or from private companies for services provided abroad, an income that allows them living in the country;

  - By decision of the Institute, pursuant to the rating system set forth for such purpose, in terms of article 57 of the Law;

  - Lapsing four years since the foreigner had a permit of temporary residence;

  - For having Mexican children by birth, and

  - For being ancestors or descendants in a straight line up to the second degree of a Mexican by birth.

Foreigners to whom are granted the status of stay of permanent residents will be able to obtain a permit for working in exchange of compensation/ remuneration in the country, subject to a job offer; and they will be entitled to enter and leave national territory as many times as they want.

Likewise, permanent residents may bring in their personal property (bienes muebles), in the form and terms set forth by the applicable legislation.
The issues related to the acknowledgement of the status of refugee, the granting of complementary protection, and the determination of stateless status, will be governed by the provisions of international treaties and conventions to which the Mexican Government is a party and other applicable laws.

03

Recent Practice Experience

With the implementation of the new migration policy in our country, any assignment of an expatriate to Mexico, as employee of the relevant Mexican company, must take into account the following aspects:

- Mexican companies shall have their registration certificate as employers filed with the immigration authority in Mexico (INM), since it is an essential document to perform any immigration procedure with respect to foreign staff assigned to Mexico.
- Any hiring of new foreign staff assigned to Mexico must be requested through an entry permit, since the new provisions on immigration do not allow changing the status of stay of visitors with no remunerated-activities (tourist or business people) to work permits in Mexico.

Notwithstanding the foregoing, we would like to briefly describe the immigration procedure to obtain a visa as Temporary Resident with remunerated-activities:

Upon receipt of the filled-out documentation, both from the Mexican company and the foreign titleholder, the application is submitted with the corresponding local office of the INM and within a term of 20 business days the official letter of authorization is obtained from the INM.

Upon receipt of the official letter of authorization, we will send you a letter of instructions in order for the employee presents himself/herself with any Consulate in Mexico to receive his/her consular visa and obtains his/her appointment (30 days following the date on which he received the official letter) and attends therein for receiving and getting stamped his/her Mexican visa in his/her passport.

Afterwards, the interested party will have to travel to the country within the next six months (maximum term) or immediately, to show his/her passport and Mexican visa at the point of entry and obtain the Multiple Immigration Form (Forma Migratoria Múltiple, FMM) and shall strike out the visa blank space for exchanging the immigration document. There is a maximum term of 30 calendar days to request the issuance of his/her immigration document (credential).

Upon entry to the country, the interested party shall request the issuance of his/her migration document (credential).

At this stage, the interested party must appear to stamp and sign his/her new immigration document (credential).

During the issuance process of his/her immigration document, the interested party may leave the country, prior applying for an official letter for departure and returning back. Such official letter must be requested at least four business days prior leaving the country.

04

Frequently Asked Questions

1. Is it necessary to prove the professional capacity of foreigners in Mexico?

Yes, since the immigration authorities or the Consulates of Mexico may request the interested parties to prove their professional capacity, which is why we recommend to have the degrees or diplomas duly apostilled or legalized.

Mexican Immigration authorities may obtain the necessary documents or information to verify that the foreigners have the necessary capacities to perform their activities in Mexico.

2. Which documents are required to obtain the status of stay for family members?

It is necessary that the family documents (marriage certificate and birth certificates of the children) are duly apostilled or legalized by the Consulate of Mexico; these are essential documents to prove family ties.

3. Which documents are required to obtain the employer registration with the INM?

Companies must prove their legal existence and prove that they are in good standing with their tax obligations; as to legal entities, the following documents shall be submitted: i. Articles of incorporation or public instrument that proves the legal existence of the legal entity, as well as their amendments; ii. Public instrument that specifies the type of power-of-attorney or mandate and the powers granted to the legal representatives or attorneys-in-fact if the articles of incorporation do not provide them; iii. Official valid ID in force of the legal representative or attorney-in-fact; iv. Proof of address of the legal entity, whose issuance date is not greater than thirty days; v. Certificate/Proof of registration in the Federal Taxpayers Registration and proof issued by a competent authority with respect to the submission of the last tax return; and; vi. List of employees and their nationality.

4. May a wife of a temporary resident work in Mexico?

Yes, it is possible for a wife of a temporary resident to work in Mexico; for that purpose, she must obtain prior authorization to be able to work in Mexico and, depending on the activity to be performed in Mexico, the necessary documentation must be submitted with the INM to obtain her work permit.

It is required that a legal entity or individual is interested in hiring the foreigner in Mexico.

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