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## II. Investment General Considerations

### A. Political system

As of November, 2006 the Cámara de Diputados (lower house) - formed by 500 deputies - was established for the third consecutive time by a plurality of political parties, none of which form the majority.

Meanwhile, the three major parties - Partido Revolucionario Institucional (PRI), Partido Acción Nacional (PAN), and Partido de la Revolución Democrática (PRD) - control more than 90 percent of the Chamber; the other three minor parties retain the rest of the seats. The 2006 federal election has left the PRI as the third major party.

None of the parliamentary groups, however, is sufficiently numerous to approve ordinary federal laws, which requires a simple majority in both chambers; nor are any sufficiently numerous to approve constitutional amendments, as two thirds of both chambers is required, in addition to the simple majority of the local legislatures.

The Senate of the Republic, formed by 128 senators is currently under control of the three major parties (PAN-52; PRD-26, and PRI-33).

Regarding the state governments, the three main parties have all won gubernatorial seats. For instance, the PRI has 17, the PAN 8, and the PRD 4. Furthermore, the states of Baja California Sur, Chiapas and Tlaxcala, all have governing coalitions

The presidential victory of Vicente Fox (candidate of the PAN) in July 2000, ended the PRI's 71 years of absolute political control. As mentioned above, since losing its presidential seat, the PRI's political influence has continued to decline as it has lost elected positions in the lower house, the state governments, and in municipal governments.

The PRI maintains its position as an important political force on the national level, however, the PRD has gained political power in all levels of government, including the Federal District. Although the national power of the PAN began to decline after receiving the presidential position in 2000, it regained its political strength with another presidential victory in the recent July 2006, elections.

Despite the fact that many Mexicans were once skeptical of the political system, the 2006 elections demonstrated Mexican support of democracy, as approximately 42 million citizens voted in the presidential elections. With a just electoral process, fierce competition between the national parties, and the support and participation of the people, Mexico has achieved a flourishing democratic environment.

Mexico is a constitutional democracy under a federal system of government.

The political system features six-year presidential and senatorial terms, three-year terms for members of the lower house of Congress, and no reelection for any official.

The current Constitution dates from 1917 and patterns the Mexican political structure after that of the United States: a popularly elected president, a lower house of Congress with 500 members, a Senate with 128, and a separate judiciary. There are 31 states, each with its own constitution, governor, legislature, and courts. Furthermore, Mexico's capital is a Federal District rather than a state, as is the District of Columbia.

Although Mexico currently possesses a thriving democracy, its multi-party political system is a relatively recent achievement. After the 1910 Revolution, political chaos occurred until all the important factions of society were absorbed into a single ruling party in 1929. That party, now the PRI, consolidated the country by making space for diverse political positions with a workable in-party consensus, and led Mexico through years of unparalleled growth without any opposition until the political protests of students in 1968. The PRI's domination was so absolute that even as late as 1976, José López Portillo ran unopposed for the presidency. However, Mexican prosperity advanced rapidly in spite of the lack of political plurality.

Starting with the administration of Miguel de la Madrid (1982-1988), Carlos Salinas de Gortari (1988-1994), and especially during the administration of Ernesto Zedillo (1994-2000), the groundwork was laid for future political pluralism and Mexico's present economic growth. Such political pluralism achieved consolidation during the administration of Vicente Fox. Although briefly interrupted by the 1995 recession, Mexico's economic growth continues to prosper.

The 1980's saw the rapid advancement of political parties opposing the PRI, and such are now proportionally represented in both houses of Congress, and have now won the executive leadership of several states and Mexico City. All parties now receive fair and ample coverage in the media.

By the 1980's, Mexico began to change its historic economic ideals, abandoning its closed economy and government owned production and service industries. During this period of change, Mexico opened the economy, renounced import substitution, entered into free trade agreements, and privatized the vast majority of government-run enterprises. Furthermore, through tight austerity measures, the government has attained a balanced budget and macroeconomic indicators demonstrate fierce economic growth and stability.

Currently, all political parties are committed to retaining privatization. In addition, the three major political platforms are dedicated to improving individual guarantees and property rights, strengthening the rule of law, achieving exchange rate stability and reducing inflation, implementing a more equitable tax system, increasing the transparency behind public expenditure, producing economic growth and development that will benefit the entire population, and enlarging domestic savings.

In early 1996, the World Bank conceded that permanent economic stability in Mexico could not be possible without political reform.

Accordingly, President Zedillo made political reform the goal of his administration, and the subsequent elections have borne the fruits of his efforts.

With greater participation of opposing parties, civic organizations, and the general population, 1997 saw the realization of important political reforms. For instance, the Federal Electoral Institute, which manages national elections, is now impartial and nonpartisan.

The effective autonomy of the Federal Electoral Institute has been substantiated not only in recent transparent federal elections, but also in its ability to impose fines. For example, in the year 2000, the institute imposed the highest fines in the history of Mexico upon the PRI and PAN for the violations of election laws with respect to the resources used for their presidential campaigns.

Although the Federal Congress improved the political party system with fairer elections, and the Federal Electoral Institute guaranteed the equality in access to financing and the media, political criticisms still exist. Currently, commentators criticize the excessive expense of electoral campaigns, as well as the bureaucracy of the political parties. Therefore, the contemporary democracy in Mexico not only demands transparency in elections and in the participation of the parties and civil organizations in political life, but it also demands reasonableness in the finance of campaigns, and a true representation of the citizens that generate human development in each family.

During the administration of President Fox, the Federal Congress approved important laws of a political nature such as the Federal Law of Patrimonial Responsibility of the State, Law for the Professional Service of Career of the Federal Public Administration, and the Federal Law of Transparency and Access to the Public Government Information. However, legislative structural reforms in economic matters, such as in energy, labor, and tax, are still pending. Most likely, all of them will have to be accomplished during the new Calderon's administration.

## ***B. Legal System***

Mexico's legal system is based on the civil law system, originating in Roman Law, and as further developed and evolved in continental Europe. More recently, Mexico's legal system has been influenced by Anglo Saxon law. The civil law system is based on "written law." comprised of codes or statutes that present the general principles governing broad areas of law. Therefore, the judiciary in civil law countries such as Mexico, does not play the central role in interpreting and "making" the law as it does in common law jurisdictions.

All laws regulating commerce, investment, and trade in Mexico, are federal in nature and apply throughout the country to entities operating therein. The statutes or codes most relevant to firms doing business in Mexico are the Companies Law, the Civil Code, the Banking Law, the Competition Law and its regulations, the Foreign Investment Law, the

Labor Law, the Negotiable Instruments Law, the Commercial Code, and tax laws (mainly the Income Tax Law and the Value Added Tax Law).

### *C. Economic system*

The Mexican Constitution governs many aspects of the country's regulatory system for economic development and foreign investment. Constitutional authority for the enactment and implementation of economic policy is shared between the Congress and the President. Article 73 of the Constitution authorizes Congress to enact laws to promote and regulate investments in Mexico, both by Mexicans and foreigners. Under Article 89, the President must ensure that the laws passed by Congress are faithfully executed.

The State is in charge of guiding national development and has the authority to plan and coordinate national economic activity. The Constitution provides that the public, private, and social sectors will participate in the national economic development.

The Federal Congress is authorized to enact legislation relating to the national plan for economic and social development. The President enforces laws and establishes the procedures for participation and consultation in national planning.

In past decades, the Mexican government pursued an inward-looking, statistical model of development, characterized by pervasive import restrictions, strict regulation of foreign investment, and a national economy dominated by government-owned-or-operated enterprises with highly regulated private Mexican investments. By the mid 1980's, however, Mexico decided to change its economic model through a transformation of the existing and regulatory framework. The first indication of such changes was the liberal interpretation of the 1973 foreign investment law which, as its title indicated, was a "Law to Promote Mexican Investment and Regulate Foreign Investment." With a series of specific resolutions in the mid 1980's, a more liberal interpretation of the 1973 Law was given. Such liberalizing criteria was followed by the 1989 Regulations to the 1973 Law, extending liberalization, including neutral investment, and providing for specific requirements to permit the increase of foreign participation over 49 percent, without prior authorization, in most economic activities.

Finally, the December 1993 Foreign Investment Law was enacted to further liberalize and permit direct foreign investment in most economic activities. With that law, the foreign investment policy changed from restricting foreign investments, except when permission was granted, to a more progressive policy permitting all types of foreign investment, unless specifically prohibited.

The Mexican government has established new economic policy initiatives that have resulted in the elimination of trade barriers, a reduction of tariff levels, massive privatization of government-owned entities, new rules governing foreign investment, membership in 1986 in GATT (which was succeeded by the World Trade Organization as of January 1, 1995), the ratification and implementation of NAFTA, membership in the OECD, and execution of various free-trade treaties, including with the EU.

### *D. Judicial system*

Mexico's court system is divided into federal and local courts. Local courts apply their own laws regarding civil and criminal matters. However, regarding commercial disputes, they apply federal laws.

#### **1. Federal judicial system**

The federal judicial system consists of the Supreme Court of Justice, the Electoral Court, the Collegiate and Unitary Circuit Courts, District Courts, Federal Jury of Citizens, and a Federal Judicial Board.

#### **a) The Supreme Court of Justice**

The Supreme Court is divided into two chambers and is composed of eleven justices, one of whom serves as its president. The Supreme Court may, on certain matters, act in a plenary session.

The Supreme Court of Justice reviews the following matters:

*i)* Constitutional controversies arising between the Federal government and the states or the Federal District, the Federal government and the municipalities, Executive and Legislative branches, between states, and between states and the Federal District.

If a decision by the Supreme Court in these matters is approved by a majority of eight votes, the decision is "stare decisis."

Other decisions may be rendered by the vote of the majority of the members of the Court. Decisions so rendered will produce effects only for the parties to the controversy and will not be considered "stare decisis."

*ii)* Claims asserting unconstitutionality due to contradictions between a law, regulation or other disposition of general application, and the Constitution.

These claims may be filed within 30 days of publication of the relevant rules issued by 33 percent of the Chamber of Representatives or Senate, depending on the issue, or upon the request of the Attorney General, or other authorities as provided by law.

The Supreme Court of Justice may declare a law, regulation or disposition invalid only by decision of at least eight members. Upon the issuance of a decision declaring an act unconstitutional, the act is considered to be overturned. The application of an invalid law or disposition by any authority is illegal.

*iii)* Revision of Judgments of District Courts and Unitary Circuit Courts, in certain cases, and revision of certain judgments issued by the Collegiate Circuit Courts in direct "amparo" (constitutional trial) suits. The direct "amparo" suits may be filed against final judgments and decisions rendered by judicial, administrative or labor courts.

#### **b) Collegiate Circuit Courts**

Each one of these courts is composed of three magistrates who hear and resolve direct "amparo" proceedings against final decisions because of violations during the procedure or that resulted from the decision.

In addition, Collegiate Circuit Courts resolve appeals for review against decisions of District Courts and Unitary Circuit Courts in "amparo" suits.

#### **c) Unitary Circuit Courts**

Unitary Circuit Courts are courts of appeal in matters pertaining to the federal jurisdiction. A magistrate sitting alone hears appeals of decisions issued by District Judges, as well as some specific cases of "amparo" proceedings.

#### **d) District Courts**

District Courts are composed of a single judge and have dual jurisdiction:

*i)* To hear "amparo" suits brought against acts of authorities that infringe upon individual guarantees (constitutional rights) and which are not final decisions, and

ii) To intervene in suits concerning the application of federal laws. Moreover, the District Courts are the competent courts to resolve bankruptcy cases according to the Law of Bankruptcies Procedures.

#### **e) Federal Jury of Citizens**

The Federal Jury of Citizens may decide situations of fact that are submitted by the District Courts, and is competent to decide on crimes committed by the press against the public order, or the external or internal security of the country. However, the jury system is not generally available in civil or criminal trials

#### **f) Federal Judicial Board**

The Federal Judicial Board is in charge of the management and surveillance of the judicial branch, except with regard to the Supreme Court. It is also in charge of appointing and removing magistrates and judges.

### **2. Local courts**

The court structure of the Federal District in Mexico City is modeled after the structure of state courts, and consists of:

- a) The Superior Court of Justice of the Federal District, which hears appeals for local, criminal, civil or commercial matters. Such matters usually arise from the enforcement of local or federal laws when applicable;
- b) The Court of First Instance, which decides cases governed by local laws. There are specialized First Instance Courts for civil, commercial, family, criminal, and leasing cases.
- c) Courts of Justice of the Peace with jurisdiction over cases in which minor amounts are involved.

#### ***E. The new regime on State's liability***

The Federal Law on Patrimonial Liability of the State, enacted on December 2004, establishes both substantive and procedural rules with respect to the liability potentially arising from the activity of any federal public entity.

Some of the key features of this law are the following: (i) tort actions such as negligence are duly covered; (ii) the indemnification shall include the totality of damages pursuant to Mexican Law; (iii) cases to which the law is applicable are litigated before the Federal Court of Fiscal and Administrative Justice; (iv) it establishes the limit amount recoverable regarding general damages related to the injury suffered; and (v) it regulates the indemnification for pain & suffering (psychological damage).

Whilst this recent piece of legislation is referred to tort liability (illicit acts), the contractual liability of federal entities is still based on the administrative contracts themselves, as well as on the legislation applicable to public works and services.