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by

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Abstract

Mexico's complex regulatory landscape for foreign investment, needs an examination of the intricate interplay between national policies and international agreements. The dichotomy between Mexico's role in the United States-Mexico Agreement (USMCA) and its evolving political climate sets the stage for a nuanced analysis.

For the past few years, the Mexican government has prioritized combating corruption, social justice, and reclaiming the State's role in key sectors, such as energy. These policy shifts have led to a surge in investment arbitrations against Mexico, reflecting tensions between the government's radical and prudent wings. This Country Note outlines significant political decisions, including reforms in the energy sector and recent actions against taken by the federal government to illustrate the administration's complex stance on private investment. Moreover, the legal framework, governed by the Foreign Investment Law, is explored alongside the regulatory bodies overseeing FDI.

Despite Mexico's historical openness to FDI, recent developments indicate challenges. Interested parties may scrutinize the underdeveloped screening mechanism and the government's use of 'national security' to prioritize state projects, leading to legal disputes. This requires a delicate balance between international agreements, evolving political ideologies, and regulatory mechanisms shapes Mexico's dynamic landscape for foreign investors.

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1. Background

1.1. Foreign Investment Policy

1.1.1. Current political climate

Mexico's national and international regulations over foreign investment might appear quite antagonistic. On one hand, Mexico figures as a member of the 2020 United States-Mexico Agreement (the "USMCA")[1], and geographically stands as the United States' second-largest trading partner.[2] However, in ground, foreign investment has seen several new harsh policies after President López Obrador assumed office on December 1st, 2018. Among others, his administration's political platform is chiefly concentrated on recovering the State's role in economic activities, particularly in the energy and oil and gas industries, among other sectors.[3] These policies have impacted foreign investments as shown in an increasing waive of investment arbitrations against Mexico.[4]

Most of these policies are embedded within the a "National Development Plan" issued by the President.[5] Through this Plan, the public administration fixes their short-, medium-, and long-term goals. On the first lines of the 2019-2013 National Development Plan, the following lines may be read: "The market cannot substitute the State."[6]

While many governmental decisions may seem erratic, President López Obrador has in fact remained mainly consistent with his campaign promises and his views on the role of State,

[1] Successor to the 1994 North America Free Trade Agreement ("NAFTA")
[2] United States Census Bureau, (2022) 'Foreign Trade: Top Trading Partners, https://www.census.gov/foreign-trade/statistics/highlights/toppartners.html.
[3] National Development Plan, 2019-2024. Published at the Official Federal Gazette, on July 12, 2019.
[4] Susannah Moddy (2023) US investor hits Mexico with land seizure claim. Global Arbitration Review "Although NAFTA expired at the end of June 2020, investors are permitted to bring NAFTA legacy claims until 30 June 2023 under the United States-Mexico-Canada Agreement (USMCA). As the deadline to bring such claims approaches, Mexico has recently been hit by legacy claims from two Canadian mining companies, a Texan parking investor and a California-based parking investor."
[5] National Development Plan 2019-2024. Published at the Official Federal Gazette, on July 12, 2019.
[6] National Development Plan 2019-2024. Published at the Official Federal Gazette, on July 12, 2019, p. 1.

as reflected in a series of publications authored by him.[7] His cabinet is understood to be divided between a radical wing which wishes to revert all major institutional decisions adopted by past administrations and those who advocate for prudent economic and political decisions.[8] Tensions between both sides have been common, resulting in the resignation of key elements of the prudent wing of the government.[9] In addition, budgetary cuts and the so-called *Republican austerity*, which President López Obrador has promoted within the public service, have considerably restricted the administration's ability to implement his political agenda.[10]

Regarding private investment, President López Obrador has been openly contentious against a certain group of Mexican and foreign investors, which he claims were benefited by past administrations.[11] However, he has also been very close to an opposing group of Mexican investors to whom he has assigned important governmental contracts. Moreover, his meetings and constant communications with certain private funds and companies in the tech industry, as well as his role and support in enacting the USMCA show that he is not uninterested in foreign investment.

Below please find a brief summary of this administration's most noteworthy political decisions:

<u>Cancellation of Mexico City's new international airport</u>: This project was designed and initiated during President Enrique Peña's mandate. However, the project lagged in meeting milestones and budget constraints. During his campaign, President López Obrador

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[7] Román-Morales, I. (2018). "La economía mexicana en tiempos de López Obrador". En Análisis Plural, primer semestre de 2018. Tlaquepaque, Jalisco: ITESO.
[8] For a discussion on the Federal Government backlash against neoliberal policies, see, Ramón Centeno (2021). "López Obrador o la izquierda que no es". Foro Internacional, vol. 61, No. 1, Ciudad de México. versión impresa ISSN 0185-013X.
[9] The Ministry of Environment and Natural Resources, the Head of the Mexican Institute for Social Security, and the Ministry of Economy are some the high members of the Mexican Federal Government that have resigned in the last few years. See, Ivonne Acuña. (2019) "Análisis: las renuncias en el gabinete de AMLO: ¿Qué hay detrás de ellas?" Ibero, Ciudad de México.
[10] José Clavellina (2020). "Tax austerity and economic growth". Instituto Belisario Domínguez. Senado de la República. Dirección General de Finanzas, p.1.
[11] See, Official Governmental Communication of the President's Conference (2020). Presidente anuncia inversión de Microsoft por 1,100 mdd para el desarrollo tecnológico. Available at: https://lopezobrador.org.mx/temas/amlo-microsoft/ ("President Andrés Manuel López Obrador and Microsoft representatives announced that the company will invest 1.1 billion dollars in Mexico over the next five years to expand the development of digital technology in the country and facilitate access to all people.").

continuously advocated against the airport, depicting it as riddled with corruption. Before taking office, President-elect López Obrador held a public consultation without governmental or legal sanction to determine the future of the project which called for its cancellation. The project was called off by President López Obrador upon his taking of office. Although multiple investment arbitrations loomed over the horizon, the Federal Government indemnify all foreign private parties that were affected due to the airport's cancellation.[12]

Cancellation of the Constellation Brands Brewery Plant in Mexicali: In 2016, Constellation Brands announced the construction of a brewery in Mexicali, Baja California. Civil society organizations opposed the project, citing concerns on the scarcity of water and calling for a public consultation on the project. In March 2019, President López Obrador announced that the Secretariat of Government would organize a public consultation, which was held in the same month. With less than 5% voting turnout, the majority of the voters decided against the plant. Accordingly, the federal government announced that the National Water Commission would not issue the pending water usage permits required for the facility's operation. The federal government's participation in this matter is rooted in the President's social justice platform.[13]

Reforms in the energy sector: President López Obrador has a State-centered approach regarding the energy sector. Since President López Obrador's taking of office, his administration has been trying to upend the 2013 Energy Reform through important regulatory tweaks by giving more market share to the energy state owned entities—Pemex and CFE. In February 2021, President López Obrador sent a "*priority bill*" to Congress proposing drastic amendments to the Electricity Industry Law and increasing State influence over the electricity market. This bill was approved and enacted in March 2021 and, was met with an avalanche of amparo claims submitted by stakeholders in the energy sector.[14]

[12] See, Official Gubernamental Communication (2019). Razones para la cancelación del proyecto del Nuevo Aeropuerto en Texcoco. Available at: https://www.gob.mx/sct/articulos/razones-para-la-cancelacion-del-proyecto-del-nuevo-aeropuerto-en-texcoco#:~:text=Las%20estimaciones%20indicaban%20que%20el,agua%20y%20sobreexplotaci%C3%B3n%20de%20acu%C3%ADferos.

[13] Official Gubernamental Communication (2020). Concluye ejercicio participativo en Mexicali con relación a cervecera Constellation Brands. Available at: https://www.gob.mx/segob/prensa/concluye-ejercicio-participativo-en-mexicali-con-relacion-a-cervecera-constellation-brands

[14] Official Gubernamental Communication (2022). Iniciativa de reforma eléctrica se queda como está, afirma presidente López Obrador. Available at: https://www.gob.mx/presidencia/prensa/iniciativa-de-reforma-electrica-se-queda-como-esta-afirma-presidente-lopez-obrador

President López Obrador has recently threatened to reform the Constitution if the new law is deemed unconstitutional. Additionally, in March 2021, the executive branch sent another "priority bill" to Congress amending the Hydrocarbons Law, which currently remains pending. If enacted, this bill could have material negative impact on private investments in the hydrocarbons sector. The Mexican Supreme Court has already ruled that most of the content of the "priority bill", will eventually be striked down though the amparo claims.[15]

Pension fund manager's reduction of administration fees: President López Obrador's government has focused its attention on the pension fund managers' administration of workers savings. Bills presented by Congressmen of the President's party (Morena) called for an outright nationalization of the pension fund manager's assets or considerable reductions in their administration fees. In December 2020, the current administration passed a reform to the Pension Funds Systems Law establishing a new maximum cap on the administration fees charged by pension fund managers (Afores) subject to the economic policy decisions and legislation of the United States, Colombia, and Chile. While these measures shall affect pensions fund managers, they should be understood within the context of this administration's aim to widen the social security net to more disadvantaged workers within an austerity program and thrift government.[16]

Mining sector: Also, in hand with the President's objective of strengthening of national sovereignty and social justice, he has implemented measures against the expansion in the mining sector. In particular, while the President has stated that the existing mining concessions shall not be cancelled, he has announced that no more mining concessions shall be issued during his administration which has caused concerns for foreign investors in the sector.[17]

Telecom law: On April 17, 2021, a reform to the Federal Telecommunications and Broadcasting Law entered into force in Mexico. This reform created the National Registry of Mobile Telephony Users, which consists of a database containing information (including

[15] Constitutional Action 64/2021. Supreme Court of Justice of the Nation, Main Chamber.
[16] Official Gubernamental Communication (2021). La Junta de Gobierno de CONSAR modifica sus políticas y criterios en materia de comisiones. Available at: https://www.gob.mx/consar/prensa/la-junta-de-gobierno-de-consar-modifica-sus-politicas-y-criterios-en-materia-de-comisiones?idiom=es
[17] Official Gubernamental Communication (2022). México contará con una empresa del Estado para el aprovechamiento del litio, anuncia presidente. Available at: https://www.gob.mx/presidencia/prensa/mexico-contara-con-una-empresa-del-estado-para-el-aprovechamiento-del-litio-anuncia-presidente

biometric data) and the identities of the owners of the relevant mobile telephone lines, including individuals and entities, to be used as a tool in the fight against crime.[18]

Labor law reform: On April 21, 2021, a reform to Mexican labor laws was approved by Congress. This reform considerably restricts employment subcontracting by requiring that it only be carried out in specialized services and works that are not part companies' corporate purpose and by providing that schemes that simulate subcontracting will be considered as tax fraud, among others. The reform is recently entered into force and provides that companies had until August 2022 to adapt to the new legislation.[19]

Judicial reform: On April 23, 2021, Congress approved a reform that seeks to eliminate corruption and nepotism within the Mexican judicial system. However, the reform also contained a controversial article that attempted to extend the term of Chief Justice Arturo Zaldívar—who is favored by President López Obrador—by two years despite being unconstitutional.[20]

1.1.2. Historical Background on Mexico's FDI approach

Apart from the noted examples where the Mexican government backlashed against foreign investment, Mexico has a history of welcoming foreign direct investment ("FDI") and has generally had a positive attitude towards foreign investors. The country has a range of policies in place to actively attract foreign investment, including a range of free trade agreements with other countries, a favorable investment climate, and a well-developed infrastructure.

The Mexican approach to FDI has evolved over time. In the early twentieth century, the Mexican government was cautious of foreign investment and implemented control measures to regulate certain sectors. However, in the late 1980s and early 1990s, there was a

[18] El Economista (*The Economist*) (2021). Senado aprueba, en lo general, crear Padrón Nacional de Usuarios de Telefonía Móvil. Available at: https://www.eleconomista.com.mx/politica/Senado-aprueba-padron-nacional-de-usuarios-de-telefonia-movil-20210413-0085.html
[19] Official Gubernmantal Communication (2021). Reforma en Materia de Subcontratación. Available at: www.gob.mx.
[20] Decree declaring the amendment and addition of various provisions of the Political Constitution of the United Mexican States relating to the Judicial Branch of the Federation. Published at the Official Federal Gazette, on March 11, 2021.

significant shift towards an open economy and a more welcoming attitude towards FDI.[21] Historically, the Mexican government targeted strategic sectors for control and expropriated industries such as railroads in 1937 and oil and gas in 1938. The government also implemented policies to promote local industries and limit FDI through measures like import licenses, quotas, tax breaks, subsidies, and FDI restrictions.

By the late 1970s, Mexico faced economic challenges, including lack of competitiveness, high inflation, a large sovereign debt, and commodity price volatility. As a result, the government realized the need to adopt a more market-oriented approach.[22] To do this, Mexico enacted the Law to Promote Mexican Investment and Regulate Foreign Investment (the "LPIMRIE"), which no longer stands in force.[23] In 1989, the government issued regulations that were more favorable to foreign investors, marking a shift towards an open and flexible FDI regime. These regulations eventually materialized in the Regulation of the Law to Promote Mexican Investment and Regulate Foreign Investment (the "RLPIMRIE").[24]

The FDI-friendly policy shift gained further momentum in the 1990s with the signing of the NAFTA between Mexico, Canada, and the United States. NAFTA led to multiple amendments, reforms, and the enactment of new laws to facilitate foreign investment and provide legal stability for investors. One of the key measures was the publication of the Foreign Investment Law (the "LIE") in December 1993.

The LIE has been in effect for nearly 29 years, with the latest update in June 2018. It generally allows foreign individuals and entities to participate in business activities, acquire stakes in companies, and acquire assets in Mexico, unless otherwise specified. This reflects the open and liberal approach to foreign investment adopted since the 1990s.

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[21] Dussel Peters, Enrique (2000). La inversión extranjera en México, Santiago de Chile, Naciones Unidas CEPAL, p. 11, Available at: https://repositorio.cepal.org/bitstream/handle/11362/4462/1/S00080670_es.pdf.
[22] Dussel Peters, Enrique (2000). La inversión extranjera en México, Santiago de Chile, Naciones Unidas CEPAL, p. 11, Available at: https://repositorio.cepal.org/bitstream/handle/11362/4462/1/S00080670_es.pdf.
[23] Law to Promote Mexican Investment and Regulate Foreign Investment. Revista de Derecho Notarial Mexicano. Available at: https://revistas-colaboracion.juridicas.unam.mx/index.php/derecho-notarial/article/view/6234/5553.
[24] Law to Promote Mexican Investment and Regulate Foreign Investment. Revista de Derecho Notarial Mexicano. Available at: https://revistas-colaboracion.juridicas.unam.mx/index.php/derecho-notarial/article/view/6234/5553.

Currently, there are no plans to amend the FDI framework in Mexico, and the country has not introduced additional screening mechanisms or engaged in discussions related to geopolitical trends, technology and privacy issues, or changes resulting from the COVID-19 pandemic. However, there may be policy changes in the future that could signal a more cautious approach to FDI in Mexico, aligning with global trends.

Mexico's government has also taken steps to promote foreign investment in specific sectors, including the energy sector, the infrastructure sector, and the technology sector. For example, the government has implemented a series of energy reforms that have opened up the sector to foreign investment and have attracted significant interest from foreign companies. These policies, although under threat by the newest public administration, have liberalized most markets. To exemplify this, Mexico National Development Plan for 2019-2024 recognizes the relevance of FDI for the following years, with some substantive nuances:[25]

> The federal government will respect the contracts signed by previous administrations, unless it is proven that they were obtained through corrupt practices, in which case they will be denounced before the corresponding authorities.
> Private investment, both domestic and foreign, will be encouraged and a framework of legal certainty, honesty, transparency and clear rules will be established. The participation of private entities will be fundamental in the regional projects of the Mayan Train and the Transisthmian Corridor, in public-private partnership modalities.

Overall, Mexico is generally seen as a country that actively seeks to attract foreign investment and is open to investment from a range of sectors. However, there are some sectors of the economy that are off-limits to foreign investors or that have specific restrictions on foreign investment. For example, foreign investment in the exploration and extraction of oil and natural gas is generally restricted to certain types of contracts or partnerships with the state-owned oil company, Pemex. Still, the predominant political perception and approach in Mexico towards foreign investment is generally positive, with the government seeking to actively attract foreign investment and create a favorable investment climate.

1.2. Legal Framework

In Mexico, the regulation of foreign investment falls upon the responsibility of the Federal Congress and is governed by the LIE. The legal basis for issuing legislation on foreign investment comes from the Federal Constitution, which grants the Congress the authority to

[25] National Development Plan, 2019-2024. Published at the Official Federal Gazette, on July 12, 2019.

pass laws to promote Mexican investment and regulate foreign investment. According to the law, when a transaction meets certain filing thresholds, it is mandatory to seek approval from the regulator before completing the transaction. There are no exemptions based on the industry involved, the nationality of the investor, or other factors. The Mexican Constitution foreseen that “Article 73. The Congress has the authority: . . . XXIX-F. To issue laws for the promotion of Mexican investment, the regulation of foreign investment.”.

The LIE defines a foreign investor as an individual or entity of any nationality other than Mexican, including foreign entities without legal standing. The law also specifies what constitutes foreign investment, which includes foreign investors holding any proportion of the capital stock of Mexican companies, Mexican companies with a majority interest held by foreign capital, and foreign investors participating in activities covered by the LIE.[26]

Three regulatory bodies responsible for implementing the LIE were established in 1973 when the first FDI legislation was enacted. These bodies are the following:

The National Commission of Foreign Investments (the “CNIE”). The CNIE has the authority to determine the percentage of FDI participation, among other responsibilities

the National Registry of Foreign Investments (the “RNIE”). The RNIE was created for the registration of foreign individuals, foreign-owned companies, Mexican companies with foreign capital, and trusts with foreign participation

The Directorate General of Foreign Investment (the “DGIE”). The DGIE is in charge of executing the policy guidelines for foreign investment matters, overseeing the RNIE, and performs as a National Contact Point over the Organisation for. Economic Cooperation and Development (the “OECD”) Guidelines for Multinational Enterprises.

Mexico’s regulatory web regarding investment policies and control is mainly consolidate through the following instruments:

- Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*), Arts.

[26] Article 1 of the Regulations of the LIE further defines ‘foreign capital with a majority interest’ as such cases in which foreign investment participates in more than 49 per cent of a company’s capital stock.; Article 2 of the LIE.

  - Regulation of investments and the right to sustainable development and indigenous rights: Art. 2(B).[27]
  - Regulation of investments and incentives to promote competitiveness in markets: Art. 25.[28]
  - Regulation of Congress' capacity to regulate foreign investment: Art. 73, XIX-F.[29]
  - Regulation of the Mexican President to regulate public finances for investment projects: Art. 74(IV).[30]
  - Regulation of state's capacity to contract foreign debt: Art. 117(VIII).[31]
- United States-Mexico-Canada Agreement.
- Foreign Investment Law.
- Regulation of the Law on Foreign Investment and the National Registry of Foreign Investment of Foreign Investment (the "LIE Regulations").

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27 "In order to promote equal opportunities for indigenous people and eliminate any discriminatory practices, the Federation, the federal entities and the municipalities will establish the institutions and determine the policies necessary to guarantee the rights of indigenous people and the integral development of their peoples and communities, which must be designed and operated jointly with them.
In order to reduce the deficiencies and backwardness that affect the indigenous peoples and communities, said authorities have the obligation to:
VII. To support productive activities and the sustainable development of indigenous communities through actions to achieve the sufficiency of their economic income, the application of incentives for public and private investments that promote the creation of jobs, the incorporation of technologies to increase their own productive capacity, as well as to ensure equitable access to supply and marketing systems."
28 "The State is responsible for guiding national development to ensure that it is comprehensive and sustainable, that it strengthens the Sovereignty of the Nation and its democratic regime and that, through competitiveness, the promotion of economic growth and employment and a fairer distribution of income and wealth, it allows the full exercise of the freedom and dignity of individuals, groups and social classes, whose security is protected by this Constitution. Competitiveness shall be understood as the set of conditions necessary to generate greater economic growth, promoting investment and the generation of employment."
29 The Congress has the power: XXIX-F. To issue laws tending to the promotion of Mexican investment, the regulation of foreign investment, the transfer of technology and the generation, dissemination and application of scientific and technological knowledge required for national development.
30 "Article 74. The exclusive powers of the House of Deputies are: IV. To annually approve the Budget of Expenditures of the Federation, after examining, discussing and, as the case may be, modifying the Bill sent by the Federal Executive, once the contributions which, in its judgment, must be decreed to cover it have been approved. Likewise, it may authorize in said Budget the multi-year disbursements for those infrastructure investment projects determined in accordance with the provisions of the regulatory law; the corresponding disbursements must be included in the subsequent Expenditure Budgets."
31 "Article 117. The States may not, in any case:
VIII. Directly or indirectly contract obligations or loans with governments of other nations, with foreign corporations or individuals, or when they must be paid in foreign currency or outside the national territory.
The States and Municipalities may not contract obligations or loans except when they are destined to productive public investments and their refinancing or restructuring, which must be carried out under the best market conditions, including those contracted by decentralized agencies, public companies and trusts and, in the case of the States, additionally to grant guarantees with respect to the indebtedness of the Municipalities."

1.3. Screening Mechanism

1.3.1. Jurisdictional Threshold

Mexico's screening mechanism is considerably underdeveloped in comparison to other jurisdictions. FDI in Mexico must pass through a number of regulators before soft landing in Mexico. Guidelines and regulations in charge of reviewing compliance with FDI specific norms –to be enforced by the CNIE– has not been developed through the last federal public administrations. Other regulators, such as Mexico's Federal Antitrust Commission ("COFECE")[32] have issued more developed and specific guidelines to allow access of a foreign company on a specific industry due to the anticompetitive effects that it might have.[33]

The LIE sets out specific jurisdictional thresholds to determine when a foreign company requires a CNIE approval before entering Mexico's market. The jurisdictional thresholds are used to determine when a foreign investor needs to obtain an approval by CNIE. Mexico applies an 'exceptionality' rule when considering if a foreign investor may participate in a specific industry or activity. Under this rule, "*foreign investment may participate in any proportion in the capital stock of Mexican companies, acquire fixed assets, enter new fields of economic activity or manufacture new lines of products, open and operate establishments, and expand or relocate existing ones, except as provided in this Law*".[34] These thresholds are based on either the activity in which the foreign investment is participating or the value of the assets of the target. In these cases, approval from the CNIE must be obtained before closing a transaction. The LIE does not prevent *ex officio* reviews for investments that do not meet the jurisdictional thresholds. However, in practice, there is no case law that records *ex officio* reviews carried out by the CNIE.

Under the LIE, a favourable resolution by the CNIE is required for foreign investors to participate directly or indirectly in a percentage greater than 49% in any of the following activities or companies in Mexico:[35]

- port services in order to allow ships to conduct inland navigation operation, such as towing, mooring and barging;
- shipping companies engaged in the exploitation of ships solely for high-seas traffic;

[32] Its term in Spanish is "*Comisión Federal de Competencia Económica*".
[33] Federal Law on Antitrust (*Ley Federal de Competencia Económica*) issued on May 23, 2015.
[34] LIE, Art. 4, para. 1.
[35] LIE, Art. 8.

- concession or permission holding companies of airfields for public service;
- private education services of pre-school, elementary, middle school, high school, college or any combination;
- legal services; and
- construction, operation and exploitation of general railways, and public services of railway transportation.

A favourable resolution from the CNIE is also required for foreign investors to participate, directly or indirectly, in a percentage greater than 49 per cent[36] of the outstanding capital stock of a Mexican company when the aggregate value of the assets of such companies on the date of acquisition exceeds $22,647,201,250.50 Mexican pesos.[37]

In practice, the authorisation provided for in Art. 9 of the LIE only applies in those cases in which foreign investors will participate in a Mexican entity for the first time. Thus, if the target company already has FDI participating exceeding the 49% threshold, then the Art. 9 authorisation will not be required to transfer such participation to a different foreign investor.[38]

1.3.2. National Security

According to the OECD, Mexico addresses national security concerns associated with the acquisition or ownership of specific assets through the following mechanisms: (i) a foreign ownership limit/cap set at 49% in companies that manufacture or commercialise explosives, firearms, cartridges, ammunitions and fireworks; and (ii) a prior approval requirement for foreign shareholdings beyond 49% in companies operating in certain sectors including, among others, education, construction and operation of general railways and overseas shipping.[39] The prior mechanisms were not necessarily created to ensure national security protection. The LIE provides a specific rule for this, which states that "*for reasons of national security, the Commission may prevent acquisitions by the foreign investor*".[40]

[36] LIE, Art. 9.
[37] Fourth General Resolution by which the CNIE determine the value of total amount of assets referred to in Art. 9 of the LIE (*Cuarta Resolución General por la que se determina el monto del valor total de los activos a que hace referencia el artículo 9o. de la Ley de Inversión Extranjera*), published in the Official Federal Gazzette.
[38] In these cases, what we normally recommend is to file a writ before the CNIE requesting confirmation that such criteria apply.
[39] OECD, *Acquisition- and ownership-related policies to safeguard essential security interests. Current and emerging trends, observed designs, and policy practice in 62 economies*, May 2020, page 141. Available at: www.oecd.org/Investment/OECD-Acquisition-ownership-policies-security-May2020.pdf?_ga=2.107934082.1430974581.1663171618-1170016489.1662404486.
[40] LIE, Art. 30.

2. Developments to Follow

Since Mexico declared in 2021 that most of the federal government's infrastructure and public works would be considered as a matter of "national security", several litigations and investment arbitrations have spawned. The government has declared that its projects, at the expense of private investment, would be considered as a priority and strategic for matters of national development. This provides competitive benefits to state-owned entities. On 22 May 2023, the Mexican Supreme Court ruled that a general declaration of "national security" over the government's projects would breach the Mexican constitution. Still, the Mexican government has insisted on using the concept "national security" to avail itself of regulatory benefits. For the upcoming years, interested parties should maintain an eye on the resolution of constitutional lawsuits against the government's decisions to rule that a project is a matter of national security.

Annex 1: Relevant laws, ordinances, regulatory guidelines

- Foreign Investment Law. Published at the Official Federal Gazette, on December 27, 1993.
- Law to Promote Mexican Investment and Regulate Foreign Investment. Revista de Derecho Notarial Mexicano. Available at: https://revistas-colaboracion.juridicas.unam.mx/index.php/derecho-notarial/article/view/6234/5553.
- National Development Plan, 2019-2024. Published at the Official Federal Gazette, on July 12, 2019.
- North America Free Trade Agreement.
- OECD Guidelines for Multinational Enterprises.
- Political Constitution of the United Mexican States. Published at the Official Federal Gazette, on February 5, 2017.
- Regulation of the Law on Foreign Investment and the National Registry of Foreign Investment of Foreign Investment. Published at the Official Federal Gazette, on September 8, 1998.
- Governmental Communication
- Official Gubernamental Communication (2019). Razones para la cancelación del proyecto del Nuevo Aeropuerto en Texcoco. Available at: https://www.gob.mx
- Official Gubernamental Communication (2020). Concluye ejercicio participativo en Mexicali con relación a cervecera Constellation Brands. Available at: www.gob.mx
- Official Governmental Communication of the President's Conference (2020). Presidente anuncia inversión de Microsoft por 1,100 mdd para el desarrollo tecnológico. Available at: https://lopezobrador.org.mx
- Official Gubernamental Communication (2021). La Junta de Gobierno de CONSAR modifica sus políticas y criterios en materia de comisiones. Available at: https://www.gob.mx
- Official Gubernmantal Communication (2021). Reforma en Materia de Subcontratación. Available at: www.gob.mx
- Official Gubernmental Communication (2021). Senado aprueba, en lo general, crear Padrón Nacional de Usuarios de Telefonía Móvil. Available at: comunicación.senado.gob.mx
- Official Gubernamental Communication (2022). Iniciativa de reforma eléctrica se queda como está, afirma presidente López Obrador. Available at: www.gob.mx
- Official Gubernamental Communication (2022). México contará con una empresa del Estado para el aprovechamiento del litio, anuncia presidente. Available at: www.gob.mx
- United States Census Bureau, (2022) 'Foreign Trade: Top Trading Partners, https://www.census.gov/foreign-trade/statistics/highlights/toppartners.html.

Annex 2: Relevant administrative and court cases

- Constitutional Action 64/2021. Supreme Court of Justice of the Nation, Main Chamber.

Annex 3: Relevant literature

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