REGIME OF FOREIGN DIRECT INVESTMENT IN MEXICO

The Foreign Investment Law (FIL) sets the specific rules that allow the entry of foreign direct investment (FDI) to the country and encourage its contribution to national development.

According to article 4 of the FIL, “foreign investment may participate in any proportion in the capital of Mexican companies, acquire fixed assets, enter new fields of economic activity or manufacture new product lines, open and operate establishments, and expand or relocate existing establishments, except as otherwise provided herein”. In other words, foreigners are free to participate or carry out any lawful economic activity, provided there is no restriction in the law.

Therefore, it is important to analyze the economic activities in which the FIL establishes a limitation, classified into the following groups:

A.1 ACTIVITIES RESERVED TO THE STATE

Some activities are strategic for the country, and therefore only the Mexican State may carry them out. These activities, listed in article 5 of the FIL, are the following:

a) Exploration and extraction of oil and other hydrocarbons, as provided by articles 27, seventh paragraph, and 28, fourth paragraph, of the Political Constitution of the United Mexican States and the respective secondary Law.

b) Planning and control of the national electric system, as well as the public services of transmission and distribution of electricity, as provided by articles 27, paragraph sixth, and 28, paragraph fourth, of the Political Constitution of the United Mexican States and the respective secondary Law.

c) Generation of nuclear energy.

d) Radioactive minerals.

e) Telegraph.

f) Radiotelegraphy.

g) Postal service.

h) Bank note issuing.

i) Minting of coins.

j) Control, supervision and surveillance of ports, airports and heliports.
A.2 Activities reserved to Mexicans or to Mexican corporations

There are some economic activities that only Mexicans or Mexican corporations, with the so-called “foreigners exclusion clause”, might carry out. These activities, listed in article 6 of the FIL, are:

a) Domestic land transportation for passengers, tourism and freight, not including messenger or courier services.
b) Development banking institutions, under the terms of the law governing the matter.
c) Rendering of professional and technical services set forth expressly by applicable legal provisions.

A.3 Activities with specific regulations

These are companies and activities in which foreign investment may participate, but only up to a maximum limit of shareholding. Article 7 of the FIL lists them, with the following limits of participation:

a) Up to 10% in cooperative companies for production.
b) Up to 25% in domestic air transportation; air taxi transportation; and specialized air transportation.
c) Up to 49% in:
   i. Manufacture and commercialization of explosives, firearms, cartridges, ammunitions and fireworks, not including acquisition and use of explosives for industrial and extraction activities nor the preparation of explosive compounds for use in said activities.
   ii. Printing and publication of newspapers for circulation solely throughout Mexico.
   iii. Series "T" shares in companies owning agricultural, ranching, and forestry lands.
   iv. Fresh water, coastal, and exclusive economic zone fishing not including fisheries.
   v. Integral port administration.
   vi. Port pilot services for inland navigation under the terms of the law governing the matter.
   vii. Shipping companies engaged in commercial exploitation of ships for inland and coastal navigation, excluding tourism cruises and exploitation of marine dredges and devices for port construction, conservation and operation.
   viii. Supply of fuel and lubricants for ships, airplanes, and railway equipment.
   ix. Broadcasting. Within this maximum of foreign investment subject to the reciprocity that exists in the country of constitution of the investor or

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1 The Foreigners Exclusion Clause is an express agreement or covenant forming an integral part of the corporate bylaws and setting forth that such corporations shall not admit, directly or indirectly, foreign investors or corporations with foreigners admission clause, as partners or stockholders.
A.4 Activities that require an authorization from the National Foreign Investment Commission.

Corporations engaged in certain activities, may be able to accept foreign investment only up to a maximum of 49% of shareholding, in principle. However, if foreigners want to acquire a higher percentage - even up to 100% - they can do so if they previously obtain a favorable resolution from the National Foreign Investment Commission.

The activities included in this category, listed in article 8 of the FIL, are:

a. Port services in order to allow ships to conduct inland navigation operation, such as towing, mooring and barging.
b. Shipping companies engaged in the exploitation of ships solely for high-seas traffic.
c. Concessionaire or permissionaire companies of air fields for public service.
d. Private education services of pre-school, elementary, middle school, high school, college or any combination.
e. Legal services.
f. Construction, operation and exploitation of general railways, and public services of railway transportation.

A special provision is also contained in article 9 of the FIL. According to this provision, a favorable resolution from the National Foreign Investment Commission is also required for foreigners to participate, directly or indirectly, in a percentage higher than 49% of the capital stock of Mexican companies when the aggregate value of the assets of such companies at the date of acquisition exceeds the amount determined annually by such Commission. This amount is annually published in the Official Gazette of the Federation and may be found at the website of the Secretariat of Economy, in this case, the General Resolution number 17, is the one that is currently in force2.

B. Authorization of the National Foreign Investment Commission

An authorization from the National Foreign Investment Commission is required for:

a) Foreign investment to participate in a percentage higher than 49% in the economic activities and companies referred to in article 8 of the Foreign Investment Law;
b) Foreign legal entities, wishing to establish themselves in Mexico, to carry out the economic activities referred to in article 8 of the Foreign Investment Law; and,
c) Foreign investment to participate, directly or indirectly, in a percentage higher than 49% of the capital stock of Mexican companies when the aggregate value of the assets of such companies at the date of acquisition exceeds the amount

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determined annually by such Commission, in accordance with article 9 of the Foreign Investment Law\(^3\).

**Where to apply for the authorization?**
The procedure is carried out before the National Foreign Investment Commission. It is located at the Directorate General of Foreign Investment, located in Insurgentes Sur 1940, 8\(^{\text{th}}\) floor, Colonia Florida, Álvaro Obregón, Mexico City. The reception of applications is from Monday to Friday from 9:00 to 14:00 hours.

Applications can also be submitted to the delegations and subdelegations of the Secretariat of Economy (SE, in Spanish).

**Which documents are necessary?**

i. Questionnaire to apply for resolution of the National Foreign Investment Commission/Authorization of the SE\(^4\).

ii. Written application, original and copy, containing:
   1. Name of the applicant or name of the company requesting the favorable resolution.
   2. Name of the representative or the person that is promoting on behalf of the applicant.
   3. Address to hear and receive notifications and, if it is the case, individuals that can receive them on behalf of the applicant.
   4. Facts or reasons giving rise to the request.
   5. Provide precise details of the main characteristics of the project.
   6. Specify if you have or will have branches or subsidiaries companies.
   7. Place and date of the request.
   8. Signature of the representative or the person that is promoting on behalf of the applicant

iii. Receipt of payment of applicable fees.

iv. Proxy signed before a public notary in favor of the person that is promoting on behalf of the applicant. If the proxy was granted abroad, it must be duly legalized or apostilled and translated to Spanish by a professional translator. If the proxy was simultaneously drafted in Spanish and another language, translation will be required for the parts in a language other than Spanish, as in the case of the apostille.

v. If the investor is:
   1. Individual: updated curriculum vitae or biographical summary.
   2. Foreign legal person: Constituent instrument, current corporate by-laws, and annual report or a description of the activities of the last fiscal year.
   3. Mexican company already constituted: constituent instrument, as well as its shareholders constituent instrument, and financial statements for the last fiscal year.

\(^3\) Currently, the amount is determined in the General Resolution 17 (Resolución General 17, in Spanish).

\(^4\) Cuestionario para solicitar resolución de la Comisión Nacional de Inversiones Extranjeras/Autorización de la SE
vi. Other documents. If the company has had changes in its corporate name, a merger or any other changes to its by-laws, original and copy of the documents attesting such modifications must be attached.

**Does it cost?**

- **Authorization from the Commission**: $6,714.00 MXN
- **New field of economic activity**: $1,289.00 MXN

**Authority’s response time**

Forty-five business days. The resolution may establish the terms and conditions that must be fulfilled for the authorization to be valid.