

## Frequently Asked Questions on Foreign Investment

### **Foreign Investment in Mexican legal entities**

- **Does foreign investor require authorization to invest in any activity?**

Generally, no. Article 4 of the [Foreign Investment Law](#) indicates that foreign persons or legal entities may participate in any proportion in the capital stock of [Mexican legal entities](#), as long as these companies do not perform activities reserved to Mexican legal entities with Foreigners' Exclusion Clause.

In the event of activities with specific regulations, investments must be subject to the established limits or, if applicable, obtain a [favorable resolution of the Foreign Investment National Commission](#).

- **Does foreign investors require authorization from the Secretariat of Economy to incorporate a Mexican legal entity?**

Generally, no. A [favorable resolution of the Foreign Investment National Commission](#) is required for foreign investment to participate in a percentage higher than 49% in a company that carries out economic activities with specific regulation stated in [Article 8](#) and to the circumstances referred to in the [Article 9](#) of the Foreign Investment Law.

- **How can a foreigner participate in Mexico?**

By establishing a [branch](#), participating in New Mexican legal entities; or by acquiring capital stocks of a [Mexican legal entity](#) already incorporated.

- **Which is the current amount of assets to request an authorization from the Foreign Investment National Commission?**

The current amount set forth is of twenty thousand one hundred eighty-four million six hundred seventy-one thousand three hundred forty-six pesos and twenty-six cents (\$20,184,671,346.26 MXN), pursuant to the [General Resolution](#) published in the Official Gazette on May 7, 2020.

- **In terms of investment, which are the activities where foreigners cannot participate nor perform?**

- a) The activities reserved exclusively to the State pursuant to Article 5 of the [Foreign Investment Law](#).
- b) Activities reserved exclusively for Mexicans or Mexican legal entities with [foreigner's exclusion clause](#) as referred to in Article 6 of the [Foreign Investment Law](#):
- c) Exceed the percentage established in the activities with specific regulations pursuant to Article 7 of the [Foreign Investment Law](#).
- d) Trusts, agreements, covenants, pyramid schemes, or any other mechanism that gives foreigners control or participation in legal entities to perform [reserved activities](#) for Mexicans, or to exceed the investment limits in [economic activities with specific regulations](#), established in Article 7 of the [Foreign Investment Law](#).
- e) Those referred to in Article 8 of the [Foreign Investment Law](#), without the [Authorization of the Foreign Investment National Commission](#), and,
- f) Statutory covenants establishing control for foreigners, including negative control for Mexicans in activities with specific regulation or reserved for Mexicans.



## **Procedures**

- **How is the stakeholder informed of the resolution of a procedure?**

A personal notice encompassing the response of its procedure shall be delivered at the given address to hear and receive notices or at the General Directorate of Foreign Investment.

If the procedure is carried out online, the answer shall be given via the System of Legal Affairs for Foreign Investment (<http://sajie.economia.gob.mx>).

- **Can resolutions be issued before the deadline expires?**

Yes. The deadline is the maximum legal term to issue a response, but resolutions can be issued before always keeping a strict order of processing according the date of receipt thereof.

- **Can the records be consulted?**

Yes. Stakeholders and authorized persons can consult them.

- **What can be done when the deadline for discharging a request is not enough?**

The stakeholder may request an extension through a written request and the corresponding payment of duties. The extension can only be equal to half of the original granted term, pursuant to Article 31 of the *Federal Law of Administrative Procedures*.

The amount for the first extension is \$769.00 (Seven hundred sixty nine Mexican pesos 00/100 MXN) and for the subsequent is \$1,538.00 (One thousand five hundred thirty-eight Mexican pesos 00/100 MXN), pursuant to Article 72 of the *Federal Law of Rights*.

- **What is the difference between the branch authorization issued by the General Directorate of Foreign Investment and the one issued by the Foreign Investment National Commission?**

The authorization issued by the General Directorate of Foreign Investment is granted to a foreign legal entity seeking to establish in Mexico and to carry out commercial activities.

The authorization granted by the Foreign Investment National Commission, is given in the event of a foreign legal entity seeking to perform the activities referred to in Article 8 of the [Foreign Investment Law](#).

- **Is it possible to request a refund when the inquiry was denied or rejected?**

No. Article 72 of the *Federal Law of Rights* mentions that the payment of duties is used for the reception of a procedure, examination of the request and issuance of a resolution, regardless of the final decision.





- **Is it possible to request a refund when there was mistake in the chain of the institution or payment key?**

Yes, the stakeholder must prepare a written request referring to the mistake for the General Directorate of Foreign Affairs, which will deliver a letter of improper payment in order to submit it before the offices of the Tax Administration System and request the refund.

- **Is it possible to request information about the records or procedures by telephone?**

No. It is necessary that the person requesting information attest his/her identity or representation.

- **How the deadline is calculated for resolving a request when it was submitted before a Delegation or Sub-delegation of the Secretariat of Economy?**

Article 42 of the Federal Law on Administrative Procedure states that in the event of a request submitted in a State Delegation or Sub-delegation of this Secretariat, the deadline for resolving will begin to count from the date of receipt at the General Directorate of Foreign Investment.

- **How to tell if a request is complete?**

When submitting the request, the personnel receiving it shall indicate if there is any requirement missing referred to in the Foreign Investment Law, its regulations, or in the Federal Law of Administrative Procedures. In addition, the Secretariat of the Economy, within the first quarter of the term to resolve may require missing information or clarification of the request.

## **Establishment of foreign legal entities in Mexico, branches and representative offices**

- **What should a foreign legal entity do to operate in Mexico?**

It shall have an authorization of the Secretariat of Economy for this purpose, without prejudice to comply with other obligations established in regulations other than the Foreign Investment Law.

- **Regarding the establishment of foreign legal entities, which authorizations are issued by the Secretariat of Economy?**

1. Authorization for legal entities to carry out commercial activities and to register their bylaws and other articles of incorporation in the Public Registry of Commerce ([branch](#)).
2. Authorization for foreign legal entities which shall not carry out commercial activities in Mexico ([representative offices](#)).

- **What are the requirements for a foreign legal entity in order to carry out commercial activities in Mexico?**

1. Obtain authorization of the Secretariat of Economy to register its articles of incorporation in the Public Registry of Commerce.
2. Register its articles of incorporation and the authorization before a Public Notary.
3. Register its deed before the Public Registry of Commerce.





- **Is it necessary for a foreign legal entity to register its documents before a Public Notary in Mexico in order to request authorization before the Secretariat of Economy?**

No. First, the foreign legal entity should request the authorization whether or not it intends to carry out commercial activities. Once it has the corresponding authorization document it may go before a Public Notary to register its bylaws.

- **Can a legal entity be authorized both to carry out commercial activities and to have representative offices?**

No, one excludes the other, that is to say, when a legal entity has an authorization to establish a [branch](#) is because it seeks to carry out commercial activities. Only when the legal entity stops performing commercial activities and merely acts on behalf of a company in Mexico, it can request an authorization to establish representative offices.

Conversely, when a legal entity has an authorization to establish [representative offices](#) it shall not perform commercial activities. Thus, if it intends to carry out regular commercial activities it shall ask the authorization to register its bylaws in the Public Registry of Commerce.

- **Which are the requirements to switch from a branch authorization to representative offices authorization or vice versa?**

The foreign legal entity must submit a written request complying with the legal formalities referred to in the Foreign Investment Law (including the payment) and specifying that it has a different authorization to ensure that it shall expire. If there are no changes in its name/business name or in its bylaws, it is enough to express it in the written request in order to take into account the articles of incorporation provided in the first procedure.

- **Can the legal representative of a foreign legal entity be a foreigner in Mexico?**

Yes, as long as the legal representative lives in Mexico and attest his/her immigration status.

- **Is the authorization given by the Secretariat of Economy useful for fiscal purposes?**

No. The foreign person or legal entity shall obtain the registration in the Federal Registry of Taxpayers.

- **If a foreign legal entity was established in Mexico without an authorization, shall it be requested later?**

Yes. The foreign legal entity shall request an authorization specifying when it was established in Mexico.

- **Can the foreign legal entity carry out all the activities indicated under its corporate purpose?**

It may only carry out the activities authorized and specified in the written request, pursuant to the Foreign Investment Law.





- **Shall it be requested as many authorizations as branches of the same legal entity seeking to establish in Mexico?**

No, one authorization is enough.

- **Is it necessary to register all the representative offices before the Foreign Investment National Registry?**

No.

- **What is the deadline for registering foreign legal entities performing commercial activities in Mexico before the Foreign Investment National Registry?**

40 business days from the date of the registration of its articles of incorporation and the authorization before a Public Notary.

- **What can be done when the authorization to establish a foreign legal entity in Mexico was denied?**

The authorization can be requested again; or commence and avoidance, whether an administrative appeal or a nullity suit before the Federal Court of Administrative Justice.

## **Neutral Investment**

- **Is it possible to obtain a neutral investment authorization to perform activities reserved to the State?**

No, these activities are exclusively performed by the State.

- **Is there a maximum percentage to authorize as neutral investment?**

No. Neutral investment aims to obtain funding from abroad, which is authorized and justified by the specific considerations of each case.

- **Can it be authorized 100 percent of neutral investment in a legal entity?**

No. Although the objective of the neutral investment is to obtain funding from abroad in order to develop investment projects, this financing complements Mexican capital stock of the legal entity that receives the neutral investment and, therefore, controls such company.

- **When a neutral investment has been authorized through a trust, can the trust contract be modified?**

Yes, as long as there is prior authorization from the Secretariat of Economy to modify it.

