



# Doing Business in Mexico A Guide for Chinese Investors

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# 1.0 The investment climate

## 1.1 General facts of Mexico

- The official name is the United Mexican States; it is divided in 31 states and one Federal District (Mexico City), where federal powers are located, covering a territory of 1,972,550 km<sup>2</sup> with a population of 108.7 million people.
- Its capital is Mexico City, Federal District which, with Guadalajara, Monterrey, Puebla and Morelia are Mexico's major cities.
- The official language is Spanish.
- The country telephone code is 52.
- January 1st, first Monday of February, third Monday of March, Easter Weekend, May 1st, September 16, third Monday of November, December 1st every six years (new administration) and December 25.
- The Mexican currency is the Mexican Peso (MXN).
- The business hours are generally from Monday to Friday 9:00 – 18:00.
- The Stock Exchange is named the Bolsa Mexicana de Valores (BMV).
- The Leading Share Index is the Índice de Precios y Cotizaciones (IPC).

## 1.2 Political Structure

Mexico's political system is organized as a representative, democratic and federal republic, the Legislative Branch is headed by the Mexican Congress, which is organized as a bicameral National Congress, formed by the Chamber of Senators and the Chamber of Deputies.

The Chamber of Deputies (the House of Representatives) is composed of 500 members elected for three-year terms. Of these 500 members, 300 are directly elected and 200 are elected by proportional representation. Deputies cannot serve two consecutive terms.

The Chamber of Senators has 128 members, of whom 96 are directly elected (two for each state, two for the federal District and one for the first minority group) and 32 are elected by proportional representation for six-year terms. Senators cannot be reelected.

President Felipe de Jesus Calderon Hinojosa, is the head of state and government since December 1st, 2006. With powers clearly defined in the Federal Constitution, the President of the Mexican Republic heads the Executive

Branch. The President is elected by direct, secret and universal vote for a six year term, the next presidential election will be held on July 1, 2012. The Federal Constitution does not allow the President to serve a second, consecutive or alternate term. The President appoints and dismisses Ministers of State.

Mexico's federal Judiciary Branch is comprised by the Supreme Court of Justice, the Council of the Federal Judiciary, the Electoral Tribunal and collegiate, unitary and district tribunals. The Supreme Court of Justice is comprised by eleven justices appointed by the President with Senate approval, and its main role is to provide the interpretation of Mexican laws and International treaties as well as render rulings with respect to constitutional matters. Special courts include a Tax Court and labour boards of conciliation and arbitration.

## 1.3 Economic Structure

The Mexican economy has undergone a transformation since the 1980s. While foreign trade has more than doubled, agriculture's share of the GDP has fallen, nevertheless it remains an important employer. Although exports have become more diversified, public finances remain heavily dependent on oil.

## 1.4 Banking and financing

Large foreign financial groups dominate Mexico's financial system. Their affiliates compete with independent financial firms operating as commercial banks, brokerage and securities houses, insurance companies, retirement fund administrators, mutual funds and leasing companies. Other important institutions include savings and loans, credit unions, government development banks, bonded warehouses, bonding companies and foreign-exchange firms.

Mexico City is the country's main financial center, although both Guadalajara and Monterrey, respectively the country's second- and third-ranked cities, are important financial, industrial and commercial centers.

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**Its capital is Mexico City, Federal District which, with Guadalajara, Monterrey, Puebla and Morelia are Mexico's major cities.**



- |                                      |                |                     |
|--------------------------------------|----------------|---------------------|
| 1. Aguascalientes                    | 12. Guerrero   | 23. Quintana Roo    |
| 2. Baja California                   | 13. Hidalgo    | 24. San Luis Potosí |
| 3. Baja California Sur               | 14. Jalisco    | 25. Sinaloa         |
| 4. Campeche                          | 15. México     | 26. Sonora          |
| 5. Chiapas                           | 16. Michoacán  | 27. Tabasco         |
| 6. Chihuahua                         | 17. Morelos    | 28. Tamaulipas      |
| 7. Coahuila                          | 18. Nayarit    | 29. Tlaxcala        |
| 8. Colima                            | 19. Nuevo León | 30. Veracruz        |
| 9. Distrito Federal<br>(Mexico City) | 20. Oaxaca     | 31. Yucatán         |
| 10. Durango                          | 21. Puebla     | 32. Zacatecas       |
| 11. Guanajuato                       | 22. Querétaro  |                     |

Despite increasing competition from China and India, many foreign firms still choose Mexico for their assembly plants and other operations.

### 1.5 Foreign trade

Mexico's economy is driven by external trade. Export earnings are fueled by manufacturing, although petroleum, tourism, agriculture and mining also contribute to revenue.

With the purpose of diversifying markets for its goods and services, Mexico provides preferential access to over a billion potential consumers, through free trade agreements, economic complementation and association agreements that have helped the country establish productive relations with various economies in Europe, Asia and Latin America.

The US remains Mexico's largest trading partner, due to its geographical proximity and the benefits of the North American Free Trade Agreement (NAFTA) between Mexico, the United States and Canada, entered into by Mexico in 1993. Despite increasing competition from China and India, many foreign firms still choose Mexico for their assembly plants and other operations. Other major export markets include Canada, Spain and Japan. Major importers include Germany, Japan and Korea.

Besides NAFTA, Mexico has also executed free trade agreements with Bolivia, Chile, Costa Rica, Israel, Nicaragua, the Group of the Three (México, Colombia and Venezuela), the Triangle of the North (Guatemala, Honduras, El Salvador and Mexico), Uruguay and the European Union, and it has signed Economic Complementation Agreements with Argentina, Brazil, Peru, Paraguay and Cuba.

Mexico is a member of the World Trade Organization (WTO) and has eliminated most export permits, substantially reduced export taxes and direct export subsidies, and eliminated fiscal incentives for exports. A variety of export-incentive programs, including special temporary import programmes, are in place to encourage export sales. The legislation promoting in-bond facilities in Mexico (maquiladoras) makes the country an attractive place to manufacture goods for export to the US.

### 1.6 Economy

Mexican economy is export oriented and is based on manufacturing, although petroleum, tourism, agriculture and mining also contribute to revenue.

Most economic activity is concentrated in Mexico's largest cities (Mexico City, Guadalajara and Monterrey, among others). It is common to find manufacture of goods facilities in the six northern states; many of which are sold

in the US. The legislation promoting in-bond facilities in Mexico (maquiladoras) makes the country an attractive place to manufacture goods for export.

The distribution by sector of GDP (% of GDP) is as follows:

- Agriculture 3.9%
- Industry 26.3%
- Services 69.9%

### Central Bank

The Banco de México (Banxico or the Central Bank) is an autonomous legal entity that operates in accordance with the Mexican Constitution ("Constitución Política de los Estados Unidos Mexicanos") and the Banco de Mexico Law ("Ley del Banco de México").

### Macroeconomic Policies

Mexico enacted a formal inflation-targeting regime for monetary policy since 1995, shortly after the Mexican peso (MXN) shifted from a crawling-peg to a floating exchange rate regime. The target inflation index is the Consumer Price Index and the target is set by Banxico. The target for 2010 is 4.75-5.25%; however, the medium-term target is 3.0% at end of 2011 with a tolerance interval of 1% above or below the target.

The Monetary Policy Board meets and decides on the use of monetary policy instruments so as to assure the convergence of inflation to the target.

The most important monetary policy instrument is the target for the overnight interbank interest rate (Tasa de Fondo). At its regular meetings, the Banxico Board sets a target and occasionally a basis for the Fondo interest rate.

- Monetary deposits – used to shrink or expand the money supply, in the form of cash (non-remunerated) or government debt securities.
- Liquidity loan – emergency loans granted by Banxico to distressed financial institutions.

Banxico also introduced a policy of disclosure of its intervention in the foreign exchange market. The international reserves have increased substantially over the past years to approximately USD 91 billion in 2009 from USD 48 billion in December 2002.

# 1.0 The investment climate

## **Public Debt Management Policy**

The Ministry of Finance (Secretaría de Hacienda y Crédito Público) manages the domestic and foreign public debt, issuing securities in order to implement fiscal policy. Banxico deals with government paper as well as its own paper in the secondary market in order to implement monetary policy as needed.

## **Composition and Trends**

The Ministry of Finance is constantly trying to lengthen the tenor of the federal government domestic securitized debt and reduce the relative amount of debt linked to foreign currency, when conditions are favorable.

## **Fiscal Policy**

Since the 1995 currency crisis, Mexico has done some adjustments in its fiscal policy, particularly trying to increase revenue. However, these efforts have been limited and there is a strong need to further continue to increase revenues in order to make the fiscal structure less dependent on oil related revenues. An important achievement was the introduction of a Fiscal Responsibility Law (“Ley de Responsabilidad Hacendaria”) in 2006. This has been a significant institutional factor to enhance fiscal policy. Ultimately, the fiscal policy has been key to the stabilization of the macroeconomic framework. In particular, there has been a significant reduction of external debt in terms of GDP and the promotion of a relatively deep and sophisticated domestic debt market.

The Ministry of Finance is responsible for producing Mexico’s major fiscal indicators. The data released includes the public sector debt, the public sector borrowing requirements (total public deficit), and the primary (noninterest) fiscal results of the public sector, all of these decomposed by level of government (federal, state and municipal). Additionally, the Ministry of Finance releases data on the nonfinancial revenues and expenditures (i.e. the primary result) of the Central Government and the public sector (includes public sector enterprises).

## **Anti-money laundering/Counter-terrorist financing**

Mexico has implemented anti-money laundering legislation, including the Money Laundering Regulations of 2000 and the Amendment to the Federal Criminal Code (“Código Penal Federal”) of 2007. Mexico does not have as a separate offensive terrorist financing, but amendments yet to be passed will address this issue.

Mexico has established a financial intelligence unit (Unidad de Inteligencia Financiera (UIF)). The UIF is housed within the Ministry of Finance.

Customer identification policies must be strictly applied in cases of correspondent accounts opened for banks in jurisdictions classified as Non-Cooperative Countries and Territories.

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### **1.7 Behavior, Culture and Etiquette**

Business transactions in Mexico are conducted not only through work relationships but also through personal relationships, which make negotiations more prone to success.

In general, Mexicans' hospitality and their ability to welcome people are traits that are frequently complimented by both visitors to the country and those who establish business relationships.

# 2.0 Business regulations

## 2.1 Registration and licensing

Technology contracts do not require official registration or approval. Royalty arrangements can be negotiated without restrictions between contracting parties, although prevailing market rates for equivalent technology should be followed to avoid issues with the tax authorities.

## 2.2 Price controls

Mexico generally does not have price controls.

## 2.3 Monopolies and restraint of trade

Mexico's Federal Law of Economic Competition ("Ley Federal de Competencia Económica") prohibits monopolies and certain horizontal restrictive practices deemed to be "absolute monopolistic practices." Price-fixing, restrictions of production and distribution, market sharing and concerted bidding in public tenders are strictly prohibited.

Such law also prohibits the following monopolistic practices by firms that have substantial power in the marketplace and that restrain or intend to restrain competition: vertical market sharing, restrictions on re-sales, tie-ins, exclusivity contracts, refusal to deal, and boycotts, as well as certain other practices. Substantial market power is subject to a case-by-case investigation based on factors such as the following: market participation of the economic agent and whether it has the unilateral power to fix prices, presence of barriers to market access, existence and market power of competitors, access of the economic agent and its competitors to inputs and other raw materials, and recent market performance.

**[Although the law technically prohibits monopolies per se, in practice focus is placed on abuse of monopoly power. The president of the Federal Competition Commission and other officials have made it clear that the law will be applied only against companies that engage in prohibited practices, not against those that merely have the potential to exercise monopolistic powers.]**

## 2.4 Intellectual property

The Federal Copyright Law ("Ley Federal de Derechos de Autor") provides for the National Copyright Institute (Instituto Nacional de Derechos de Autor) (INDAUTOR), an independent agency of the Ministry of Education (Secretaría de Educación Pública), responsible for the administrative enforcement of copyright laws. The INDAUTOR is authorized to conduct investigations, request inspections, enjoin copyright violations and impose sanctions.

The law grants an author both "moral" and "patrimonial" rights (moral rights recognize the author as the first and sole perpetual owner of the rights of his/her works; patrimonial rights allow the author to exploit the work exclusively or authorize others to exploit the work). Penalties apply for violations of the copyright law.

Likewise, the Intellectual Property Law ("Ley de la Propiedad Industrial") provides to the Mexican Institute of Industrial Property (IMPI), an independent agency of the Ministry of Economy, responsible for the organization and administrative enforcement of patents and trademarks, trade secrets, commercial names, etc.

## 2.5 Mergers and acquisitions

The Federal Law of Economic Competition, requires that mergers over certain thresholds established by such law be reported in advance to the Federal Competition Commission.

## 2.6 Banking

### Overview

- Legislation was passed in December 1998 allowing foreign investment in Mexico's leading banks. Spain's Banco Santander and BBVA (Banco Bilbao Vizcaya Argentaria), Citibank, HSBC and Canada's Bank of Nova Scotia (Scotiabank) control five of the country's six largest banks in terms of assets. Following extensive privatization and consolidation, approximately 90% of total banking assets in Mexico are now foreign-owned.



- There are currently 27 financial groups, 40 multiple banks, six development banks, 36 financial companies with limited operations and 73 representative offices of foreign banks operating in Mexico. There were 10,736 branches at the end of December 2009.
- Banorte, the country's fifth largest bank in terms of assets, is Mexico's only remaining large private banking institution where the majority of its capital is domestically owned. In January 2006, it acquired 70% of US-based Inter National Bank.
- Between April 2006 and March 2007, the Mexican Banking and Securities Commission (Comisión Nacional Bancaria y de Valores) (CNBV) granted licenses to 11 new banks to operate in the country, including Banco Walmart de Mexico, Banco Compartamos, Banco Ahorro Famsa, Banco Multiva, Banco Regional and UBS Bank Mexico. In 2007, Royal Bank of Scotland acquired ABN Amro's Mexican operations.



# 3.0 Foreign investment

## 3.1 Foreign investment incentives and restrictions

The Mexican government has curtailed the use of direct tax incentives for investment. The most significant tax incentive still available is the accelerated depreciation allowance for investments in production facilities, which allows same-year deductions for up to 92% of an investment's value, a number which may vary by industry or type of assets. The accelerated depreciation allowance applies only to new assets. Many state governments are pursuing foreign investment through state tax incentives.

Mexico offers no tax holidays for local or foreign investors; the country's accession to the General Agreement on Tariffs and Trade (GATT) and to its successor, the World Trade Organization (WTO), has eliminated nearly all import duty exemptions. The government has lowered duties dramatically, with trends suggesting further reductions, particularly with respect to US and Canadian trade.

Foreign investment has been simplified by amending the relevant regulations, reducing legal and administrative bureaucracy, reducing local content requirements, modifying ceilings on foreign equity, eliminating most import license requirements and overhauling intellectual property legislation.

Foreign investment is permitted in all areas, however the Foreign Investment Law ("Ley de Inversión Extranjera") (LIE) lists three main types of activities in which foreign investment is restricted:

- Activities that only the Mexican government can perform (e.g. oil, gas, electricity and nuclear energy generation, mail delivery.)
- Activities that only the Mexican citizens or Mexican companies with foreigner-exclusion clause can perform, and in which no foreign participation, direct or indirect, is allowed (e.g. land transportation of passengers and goods, radio and television services other than cable television.)
- Activities and acquisitions that are specifically regulated and in which the percentage of foreign investment (from 10% to 49%) depends on the type of activity. In those cases, the approval of the National Foreign Investment Commission (Comisión Nacional de Inversiones Extranjeras) is required.

Notwithstanding the above, foreign capital may be invested in the activities mentioned in the last two paragraphs through "neutral investment" (i.e. investment in a Mexican entity or trust, in which non-voting or limited voting shares are held that have priority to receive a certain percentage of dividends, and which is authorized by the Ministry of Economy).

The LIE limits foreign participation to certain sectors and, as a result, foreign entities can only own shares up to the following proportions:

- Up to the 10% of manufacturing cooperatives (sociedades cooperativas de producción).
- Up to the 25% in domestic transportation, air taxi, and specialized air transportation.
- Up to the 49% of the following, among others: (i) insurance companies; (ii) limited purpose financial corporations; (iii) explosives, fire arms, ammunition, and fire works companies (excluding explosives for industrial activities); (iv) printing and news paper publication for exclusive circulation in Mexico; and (v) concessionaires under the Federal Telecommunications Law ("Ley Federal de Telecomunicaciones"). In those cases, the approval of the National Foreign Investment Commission is required.

The Mexican government has created various foreign investment promotion plans which have a number of benefits. These programs include:

- Decree for the Promotion of the Manufacturing, Maquiladora, and Export Services Industries Program (IMMEX Decree), which promotes and offers subsidies to manufacturing, maquiladora, and export services companies to carry out industrial or service activities, to export merchandise, and to provide export services.
- Sector-specific Promotion Programs (PROSEC) designed under an input-destination scheme that, for example, determines goods that may be imported (inputs) with preferential tariffs. There are 24 industries involved, including the electricity, electronic, toys, playground equipment, mining and metalworking, transportation (except for automotive and auto parts) and textile and clothing sectors.

# 3.0 Foreign investment

## 3.2 Restricted zone

There are two important laws governing land acquisition in the restricted zone by foreign nationals, the Constitution and the LIE.

### Constitution of the United Mexican States

Section I of Article 27 of the Mexican Constitution provides that foreign direct ownership in an area of 100 kilometers wide from the border and 50 kilometers wide from the coastal shores, direct foreign ownership is prohibited.

### Foreign Investment Law

Notwithstanding the aforementioned, the LIE provides that, with prior permission of the Ministry of Foreign Affairs (Secretaría de Relaciones Exteriores) banking institutions may acquire in their capacity as trustees, ownership rights over land located within the restricted zone, the purpose of the trust is to grant the use and advantage of such land without granting direct ownership to foreign nationals and authorizing them to be beneficiaries of such trusts.

The above referred trust cannot exceed duration of 50 years, which may be extended prior request by the beneficiary.

## 3.3 Exchange controls

As of this date, there are no restrictions on domestic or foreign currency held locally by nonresidents, and no official guarantees against inconvertibility. Although bank accounts in dollars are not permitted for individuals, they are for companies.



# 4.0 Choice of business entity

## 4.1 Principal forms of doing business

Mexico has all the usual forms of business organization, including the stock company (*sociedad anónima*—SA) and the limited liability company (*sociedad de responsabilidad limitada*—SRL), both of which can be forms of variable capital (CV) regulated by the General Law of Commercial Companies (“*Ley General de Sociedades Mercantiles*”).

The SA and the SA de CV are the most frequently used forms of organization for foreign investors. The SA most closely resembles the public limited company or corporation. Foreign investors with wholly owned subsidiaries that want added flexibility in increasing or decreasing capital have favored the SA de CV. The only difference between the SA and the SA de CV is the variable portion of an SA de CV’s capital stock, which is usually unlimited and not subject to notary certification upon fluctuation.

Likewise, in 2006 a new Securities Market Law was passed (“*Ley del Mercado de Valores*”) and includes significant notions of corporate governance resulting from International experience. Among its contributions are defining the listed stock company (*sociedad anónima*

*bursátil*), as well as the investment promotion stock company (*sociedad anónima promotora de inversión* or SAPI) and the listed investment promotion stock company (*sociedad anónima promotora de inversión bursátil* or SAPIB).

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## 4.2 Thresholds for protection of minority shareholders under the General Law of Commercial Companies and the Securities Market Law

	% of Shareholders	
	General Law of Commercial Companies	Securities Market Law
File a civil claim against the general manager or statutory auditor of the company, provided that certain conditions are met.	33%	15%
Request the board of directors to call a shareholders’ meeting.	33%	10%
Postpone the shareholders’ meeting if they have not received complete information regarding any of the points on the agenda.	33%	10%
Contest resolutions adopted by the shareholders’ meeting, provided that certain temporal and procedural requirements are met.	33%	20%
Appoint a general manager or statutory auditor.	25%	10%

# 4.0 Choice of business entity

## **Requirements to incorporate an SA in Mexico**

**Capital.** Minimum of MXP 50,000, at least 20% of which must be paid in initially. Shares payable in kind must be paid in full immediately and remain on deposit with the corporation for two years; if the assets represented by the shares decline in value by more than 25% during that period, the shareholder must pay in the difference. Companies must place 5% of their profits in a legal reserve until the reserve equals 20% of authorized capital.

**Shareholders.** Minimum of two shareholders.

**Management.** One individual manager may be appointed (Sole Administrator) or a Board of Directors (minimum of two). A minority that holds 25% or more of shares (10% if the company shares are traded on Mexico's stock exchange) has the right to appoint one member of the Board. There are no residence or nationality requirements for board members.

**Labour.** There is no requirement that labour be represented on the Board. Firms must distribute 10% of their pretax profits to employees (PTU) annually. Only 10% of the workforce may be foreigners.

**Disclosure.** Corporations must be supervised by examiners who are appointed at the annual shareholders' meeting (a 25% minority can name additional examiners). Additionally, there are no publication requirements (except for companies listed on the stock exchange).

Taxes and fees on incorporation are minor. In accordance with the Mexican Income Tax Law ("Ley del Impuesto Sobre la Renta"), corporations with gross income exceeding MXP 34.8 million, assets exceeding MXP 69.6 million or more than 300 employees must file a special report ("dictamen fiscal") prepared by an independent public accountant with the tax authorities.

**Types of shares.** Only nominative shares are permitted. For purposes of "Mexicanization", shares are often classified as "A" or "B," with "A" shares typically restricted to Mexican ownership. "T" shares exist for companies that own agricultural land. Special shares may be issued. Founders may receive up to 10% of the corporation's profits every year during the first 10 years of existence by

means of founder bonds, provided the shareholders have received at least a 5% dividend each year. Shares may be common or preferred. Preferred shares carry limited voting rights (exercisable only during actions to transform, merge, dissolve or make other major changes) and receive a cumulative dividend (usually 5%, sometimes less) before the common shares may participate in the corporation's profits.

**Control.** A simple majority of shareholders has control, unless bylaws establish a larger majority (as frequently occurs during major decisions). Annual general meetings are required; representatives of half the corporate capital constitute a quorum. For extraordinary meetings (that is, those undertaking major changes in the corporation), 75% of capital is necessary for a quorum on first call and 50% thereafter. Decisions are determined by a simple majority, and in the case of extraordinary shareholders' meetings, decisions are determined by the shareholders representing at least half of the capital stock.

## **4.3 Establishing a branch**

Although a few companies have established branches, they are at a disadvantage for several reasons. Branches may not own real estate, and they may not deduct payments to the head office for interest, royalties, fees or other services. Establishing a branch takes more time and money than establishing a corporation, and branch charters usually contain more restrictions than corporation charters. Because branch offices are not legally separate from the head office, the head office can be held responsible for the liabilities of a branch.

Approval from the Ministry of Foreign Affairs is not required for a foreign company to open a branch office in Mexico. Instead, newcomers deal exclusively with the Ministry of Economy (*Secretaría de Economía*).

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**Taxes and fees on incorporation are minor.**



#### 4.4 Setting up a company

As mentioned above, Mexico has all the usual forms of business organization, including the SA and the S de RL. Several other forms of organization are suitable only for small operations, such as a general partnership. The permit for establishing a company requires inclusion of the "Calvo clause" in the bylaws and on share certificates. This clause waives the foreign shareholder's right to invoke foreign diplomatic intervention and relinquishes any claim to treatment different from that accorded to Mexican nationals.

Organizing a local corporation can take up to four weeks or longer, depending on the complexity of the project. A permit on the use of the desired corporate name must be secured from the Ministry of Foreign Affairs. As mentioned, a minimum of two shareholders must appear before a notary public to sign the deed of incorporation, which must contain the names, nationalities and other particulars of the founders, the name, domicile, purpose and duration of the company, a breakdown of its capital and a statement of the founders' contributions and their value, a description of the manner of administration, names of directors, managers and supervisors, the manner of liquidation, and all other special agreements that will regulate the operation. Usually, at least 20% of the capital shares must be paid immediately, and the remainder within one year.

# 5.0 Business taxation

## 5.1 Overview

Companies doing business in Mexico typically are subject to corporate income tax, value added tax, tax on real property, social security contributions on behalf of their employees, and beginning in 2008, the flat tax. Some taxes are levied at the state and municipal levels. There is no excess profits tax.

The old asset tax was replaced with a flat tax as of 1 January 2008. Under the flat tax, corporations (including permanent establishments of non-Mexican entities) and individuals pay the sum of the income tax computed under the Mexican Income Tax Law and the excess of the flat tax over the income tax, if any.

Under mandatory profit sharing rules, employers are required to distribute and pay 10% of their "adjusted" taxable income to their employees. The actual distribution of profits must be paid within 60 days after the corporate income tax return has been filed (and no later than 31 May of the following year).

The tax collector in Mexico is the Tax Administration Service (SAT).

## 5.2 Taxable income and rates

The corporate tax rate included in the text of the Law is 28%, however, because of the world economic crisis a set of transitory rules was included to increase it for years 2010, 2011 and 2012 to 30%, to be decreased to 29% for 2013 and return to 28% starting 2014.

A company is resident in Mexico if its place of effective management is in Mexico. Residents are taxed on their worldwide income. Companies not domiciled in Mexico are taxed only on their Mexican-source income (see also 5.6 below). Income is deemed to derive from Mexican sources when the assets or activities are in Mexico or when the sales or contracts are carried out in the country, regardless of where title passes.

The gross income of a resident legal entity includes all income received in cash, in kind, in services or in credit, including income derived from abroad. This includes all profits from operations and income from investments not relating to the regular business of the corporation, and capital gains.

The taxable income on which the corporate income tax rate is applied is the difference between taxable revenue and expenses. The revenue and expense recognition is on an accrual basis.

Corporate capital gains or losses arising from the sale of fixed assets are treated as ordinary income or losses, taxable at the normal corporate rates. In calculating the taxable gains arising from the sale of land, buildings, equity shares and other capital interests, companies may apply an official schedule of inflation adjustments to the acquisition cost of the asset.

## Deductions

Business expenses are deductible if they are properly documented and supported. The following deductions are permitted:

- Returns received or discounts or rebates granted in the tax year;
- Cost of goods sold;
- Net expenses of discounts, rebates or returns;
- Investments (depreciation on a straight line method, adjusted for inflation);
- Bad debt credits and losses from acts of God;
- The profit sharing paid to employees;
- Contributions for the creation or increase of employee pension or retirement funds;
- Accrued interest, subject to the thin capitalisation rules.

Dividends are neither deductible by the distributing corporation, nor included in the gross income of the recipient (although they are included in the income base for calculating profit sharing). Other non-deductible items include the following:

- Those that do not meet the formal invoice requirements, income tax or VAT payments;
- Interest and inflation adjustments made due to extemporaneous tax payments;
- Provisions for employee liability and indemnity reserves; and
- Goodwill.

The income tax law aims to recognize the “real” reduction in debt that occurs as a result of inflation and the corollary decrease in the return on assets. Under the law, any excess of the inflationary reduction in debt over the amount of interest paid out is taxable as an “inflationary profit,” but any excess of the inflationary increase in the value of assets over the return on assets is tax-deductible. The system treats as interest both foreign-exchange losses and net gains from the sale of financial instruments, such as petrobonds.

The Income Tax Law provides for two alternatives for a maquiladora to avoid creating a Mexican PE. A maquiladora may either: (1) adopt the “safe harbour” rules or prepare compliant transfer pricing documentation; or (2) elect to obtain an advance pricing agreement (APA) via a private letter ruling. Under the “safe harbour,” a maquiladora must report taxable income corresponding to the higher of the following:

- 6.9% of the value of its assets taking into account the value of all assets employed in its maquila operations, including foreign-owned assets (both fixed assets and raw materials/inventory); or
- 6.5% of its costs and expenses (taking into account operating costs and expenses as computed under Mexican GAAP).

As an alternative to the “safe harbour,” a maquiladora may avoid triggering PE status by electing to prepare transfer pricing documentation and follow some particular procedures.

#### **Flat tax**

The flat tax is calculated on a cash-flow basis, applying a 17.5 % tax rate on a tax base determined by reducing taxable revenue (primarily income derived from the sale of goods, the rendering of independent services and the leasing of tangible goods) with specific deductions. Interest, salaries and royalty payments are not deductible—with some narrow exceptions (e.g. royalties paid to independent third parties); a credit is granted to partially neutralize the impact of the non-deductible salaries. Under the flat tax rules, investments and inventory are fully deductible when purchased and paid, rather than being deducted under the depreciation or cost of goods sold rules. If deductions exceed revenue (“losses”), a credit is granted on such “losses” equal to 17.5% or the applicable rate according to the relevant fiscal year, which may be credited against the IETU in the following years.

Taxpayers first compute their income tax liability and their flat tax liability for a fiscal year. Because the income tax liability may be credited against the flat tax liability, the flat tax is paid only to the extent it exceeds the income tax (i.e. the flat tax acts as a “minimum tax”). In contrast to the abolished asset tax, any flat tax paid is not creditable for Mexican income tax purposes in subsequent years.

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## Companies not domiciled in Mexico are taxed only on their Mexican-source income.

#### **Depreciation**

Depreciation is calculated on a straight-line basis. The tax system offers the option of a one-time, present-value deduction for newly acquired assets, with the exception of investments in cars, trailers, buses and airplanes. Depreciation rates are set by the government and vary by industry and type of asset.

#### **Losses**

Tax losses are the difference between taxable income and authorised deductions when the amount of the deductions exceeds the income obtained in a particular fiscal year. Losses may be carried forward for 10 years. Losses not carried forward are forfeited.

#### **5.3 Capital gains taxation**

Capital gains arising from the sale of fixed assets, shares and real property are considered normal income and are subject to the standard corporate tax rate. Mexican law allows the proceeds from the sale of real property, shares and other fixed assets to be indexed to inflation.

#### **Maquiladoras**

As mentioned, maquiladoras are foreign factories that assemble duty-free goods in Mexico for export and that receive preferential treatment under Mexican tax law. Foreign partners of maquiladoras are exempt from permanent establishment (PE) status in Mexico if the Mexican firm reports a safe harbour level of taxable income.

# 5.0 Business taxation

## 5.4 Withholding tax

### Dividends

Dividends paid are non-deductible in computing taxable income, and dividends received are not included in taxable income. Mexico does not impose a withholding tax on dividends. Income tax paid by a nonresident company that distributes dividends to another nonresident company, which, in turn, distributes dividends to a Mexican corporation, may be credited against the Mexican corporation's income tax liability provided the following conditions are satisfied:

- The dividend and the income tax are accrued by the Mexican corporation;
- The Mexican corporation owns at least 10% of the first-tier company;
- The first-tier company owns at least 10% of the second-tier company;
- The minimum combined ownership in the second-tier company is 5%; and
- The Mexican government has concluded a broad exchange of information agreement with the country where the second-tier company is resident.

### Interest

Interest payments to foreign banks resident in tax treaty countries and that are registered before the Ministry of Finance are currently subject to a 4.9% withholding tax. The rate is 10% if in the absence of a tax treaty. Financial leases are taxed at 21%. In all other cases, the withholding tax rate is 30%.

### Royalties, technical assistance and rental payments

Payments abroad for technical assistance, know-how, use of models, plans, formulae and similar technology transfer are subject to a 25% withholding tax. Royalties paid to a foreign licensor of patents, trademarks and trade names—without the rendering of technical assistance—are subject to a 30% withholding tax, except where Mexico has a tax treaty with the relevant country.

Business enterprises that make fee or rental payments to individuals for property must withhold a 25% tax on the interest portion of the lease payments. The tax and a statement including information about the payments made must be filed with tax authorities in February of the following year.

## 5.5. Foreign income and tax treaties

Mexico grants a foreign tax credit for tax paid on income earned from abroad up to certain limits, against the amount of Mexican tax due.

Mexico has concluded tax treaties with more than 30 countries. As noted above, Mexico does not tax dividend distributions to non-residents as long as they are paid out of net (i.e. after-tax) income. Accordingly, the table below does not reflect withholding tax on dividend payments.

## 5.6 Transactions between related parties

### Transfer pricing

Transactions between related parties must be at arm's length or they may be adjusted by the SAT. Mexico's transfer pricing rules, which generally follow the OECD Transfer Pricing Guidelines, provide for the comparable uncontrolled method (this method must be the first one to be analyzed), the resale price method, the profit split method, the residual profit split method and the transactional net margin method. APAs are available and documentation must be maintained.

### Thin capitalisation

Under Mexico's thin capitalisation rules, interest paid on loans granted in cash by related parties in excess of three times stockholders' equity may not be deducted. The capitalisation rules are not applicable to taxpayers that obtain an advance pricing agreement (APA) from the tax authorities, subject to certain requirements, or to financial institutions.

### Controlled foreign companies

Companies, individuals and resident foreigners must pay tax on all earnings from companies or accounts in low-tax jurisdictions. Foreign-source income is deemed to come from a low-tax jurisdiction if it is not subject to taxation abroad or if it is subject to an income tax that is less than 75% of the income tax computed under Mexican tax legislation.

Passive income (i.e. dividends, interest, royalties and capital gains) derived directly or indirectly by a Mexican resident through a branch, entity or any other legal entity located in a preferential tax regime will be subject to taxation in Mexico in the year in which the income is derived. Specific rules apply that permit the non-taxation of active income in certain cases. Taxpayers earning income from a preferential tax regime must file an annual information return in February.

Withholding tax rates under Mexico's tax treaties			
Treaty Partner	Dividends	Interest	Royalties
Australia	0	15/10	10
Austria	0	10	10
Belgium	0	15/10	10
Brazil	0	15	15/10
Canada	0	10/0	10/0
Chile	0	15	15
China	0	10	10
Czech Republic	0	10	10
Denmark	0	5/15	10
Ecuador	0	15/10	10
Finland	0	15/10	10
France	0	5	10
Germany	0	15/10	10
Greece	0	10	10
Indonesia	0	10	10
Ireland	0	10/5	10
Israel	0	10	10
Italy	0	10	15
Japan	0	15/10	10
Korea	0	5/15	10
Luxembourg	0	10	10
Netherlands	0	15/5	10
New Zealand	0	10	10
Norway	0	15/10	10
Poland	0	15/10	10
Portugal	0	10	10
Romania	0	15	15
Singapore	0	15/5	10
Slovakia	0	10	10
Spain	0	5	10
Sweden	0	15/10	10
Switzerland	0	15/10	10
United Kingdom	0	15/10/5	10
United States	0	15/10/4.9	10

# 5.0 Business taxation

## **Consolidated returns**

Mexican law allows corporate groups to be taxed on a consolidated basis. The filing of a consolidated return has significant advantages, most notably the fact that the losses of some group companies may be offset against the profits of others. Also, dividends paid among companies of the group are not subject to any tax, notwithstanding that dividends do not originate from the UFIN (net-of-tax profit) account, until the related profits are distributed out from the groups and there is a lack of consolidated UFIN. For tax purposes, a consolidated group consists of the Mexican holding company and the subsidiaries in which it has effective direct or indirect ownership interests in excess of 50% of the voting shares. Consolidation is on a proportional basis, based on the percentage owned directly or indirectly by the controlling company. Only companies resident in Mexico may be treated as holding companies.

Consolidated tax returns must be filed in the year following authorization from the SAT. Once consolidation for tax purposes has been elected, it must be continued for at least five years.

Taxpayers must disclose in the tax report, issued by an independent public accountant, the amount of income tax that has been deferred as a result of electing to file a consolidated tax return. Failure to disclose this information will result in deconsolidation of the group.

Relevant changes were included in 2010 to incorporate complex rules through which the so called "deferred tax" will need to be reimbursed to the tax authorities six fiscal years after the one in which the consolidation benefit was taken. A set of transitory rules was included to somewhat describe how to determine the tax liability generated prior to 2010, which will need be paid starting in June 2010.

## **5.7 Turnover and other indirect taxes and duties**

A value added tax (IVA) applies to both goods and services at a standard rate of 16% (A 11% rate may be applicable in certain border zones in the country, subject to certain conditions). Interest on non-business loans and credit card debt is also subject to IVA. The following are exempt: land and residential buildings, books and newspapers, share transfers, used chattels, tickets and other evidence permitting participation in lotteries, raffles, games of chance and competitions of every nature, national currency, foreign currency and gold and silver pieces, and sales of goods among nonresidents or by a nonresident to a Mexican entity registered in an authorized programme to promote exportation of goods. Exports are subject to a 0% rate.

Imports of supplies for maquiladoras (IMMEX) if specific conditions are satisfied, are tax exempt. Services utilized abroad are subject to the 0% rate on exports of services if the services are contracted and paid by a nonresident with a PE in Mexico.

Companies may credit IVA payments against income or other tax payments; if the excess cannot be credited in its entirety, the taxpayer may apply for a refund.

Companies must settle IVA on a monthly basis, making the IVA payments for the preceding month. IVA payments for installment sales may be made when principal and interest payments are actually received, rather than when the sale is invoiced, provided half the purchase price is paid after six months (35% of the price for final consumer sales). For imports, IVA is based on customs value plus tariffs. All companies should demand that IVA payable on their purchases be separated from deductible expenses.

## **5.8 Other taxes**

A cash deposit tax at a rate of 3% applies on the amount of any cash deposits made in a taxpayer's bank accounts that exceed MXP 15,000, and only on the excess of that amount, determined by considering all cash deposits made in the same bank, even if in different accounts. The cash deposit tax will be creditable against other federal taxes.

A special tax on production and services is charged to manufacturers and wholesalers of certain goods, including alcoholic beverages and tobacco, among others. The tax rates vary by product.

The purchases of real estate are taxed at rates that vary by state.

## **5.9 Tax compliance and administration**

Corporate taxpayers must make advance income tax payments on the 17th day of the month. Advance payments are based on the preceding five most recent fiscal years in which a profit could be calculated, even if there was a loss in the immediately preceding fiscal period. All corporations must use the calendar year for financial and tax purposes.

Corporations may apply for a reduction in advance payments, although any delay in making advance payments will result in interest charges. Higher charges are applicable for unauthorized delays.

Tax returns must be filed three months after the end of the tax year. The government may challenge tax returns up to five years and, in certain circumstances, up to 10 years after filing. In practice, however, the tax authorities generally check returns for the most recent fiscal year and for the subsequent period through to the date of the examination. The tax authorities may audit a company's 10 year records, however, in the following circumstances: upon discovery of errors in any single tax category that exceeds 5% of the tax liability, omissions of profit sharing distributions, failure to register to pay tax, or where false information has been provided. Taxpayers have 5 years to file amended returns when refunds are anticipated. Refunds not made within four months of filing are due interest.

Penalty interest for late payment of tax is assessed at 0.75% per month if an extension has been granted; otherwise the rate of 1.13% is imposed. Penalty rates are adjusted monthly. Penalty interest accrued from 1 January 1992 is deductible for income tax purposes.



# 6.0 Personal taxation

## 6.1 Residency

Mexican residents are taxed on worldwide income; nonresidents are taxed only on Mexican-source income. Foreign nationals permanently residing in Mexico enjoy the same rights as citizens (absent the right to vote) and they incur the same responsibilities. Resident status may be obtained after residing in Mexico for five years.

Nonresidents on temporary assignment working for firms or subsidiaries based in Mexico are exempt from income tax on the first MXP 125,900 of annual income; they are taxed at 15% on income of MXP 125,901- MXP 1 million. All income exceeding MXP 1 million is taxed at 30%, with no deductions allowed. Nonresidents on temporary assignment and that are paid by nonresident foreign firms are exempt from income tax. Tax rates may differ under tax treaties.

## 6.2 Taxable income and rates

Taxable income includes the following: remuneration for personal services, including salary, bonuses and special allowances (e.g. housing), benefits rents received, and interest and corporate dividends paid out of gross income. Pension benefits are tax-exempt up to nine times the legal minimum salary for the region. Severance payment benefits are exempt up to 90 times the daily base salary of the region multiplied by the number of years employed.

Taxpayers engaged in business activities are required to file information on transactions worth more than MXP 50,000 on their 50 largest clients, and the information must be available if there is an audit. Accounts of donations granted, payments made to Mexican banks abroad and joint operating agreements also must be kept on record.

Personal deductions include medical and dental fees and hospital expenses incurred by the taxpayer and by the taxpayer's spouse or other dependents with income no higher than the annual minimum salary. Additionally, health insurance premiums and charitable donations are deductible from income. Mortgage interest payments and personal pension account contributions up to five minimum annual salaries are also deductible. Payments made to parties in low-tax jurisdictions are non-deductible unless it can be demonstrated that they were set at market value.

Taxpayers whose income consists of professional fees may deduct normal and documented expenses, similar to those deductible by businesses. A simplified tax system for individual taxpayers that engage in business activities is available.

In calculating capital gains for tax purposes, individuals increase the historical cost by a factor to adjust for inflation and reduce the cost by accumulated depreciation at a rate varying with the type of asset. The difference between the result and the selling price constitutes the net gain. Based on the number of years the asset was held, a certain proportion of the net gain is added to other taxable income to determine the top tax rate payable. Capital gains resulting from an individual's sale of publicly traded shares are tax-exempt in certain circumstances.

The income tax rates are progressive up to 28%, however, because of the world economic crisis a set of transitory rules was included to increase it for years 2010, 2011 and 2012 to 30%, to be decreased to 29% for 2013 and get back to 28% starting 2014. The employer withholds provisional tax payments. Taxpayers must file personal income tax returns for the preceding year by the end of April.

Some states and the Federal District impose separate taxes on wages and salaries, which are usually an employer tax liability.

## 6.3 Capital taxes

There are no capital taxes in Mexico.

Taxpayers whose income consists of professional fees may deduct normal and documented expenses, similar to those deductible by businesses.

# 7.0 Labour environment

## 7.1 Employees' rights and remuneration

Mexico's labour legislation is set forth in the Federal Labour Law ("Ley Federal del Trabajo") and the country's constitution. This legislation regulates labour contracts, minimum wages, hours of work, legal holidays and paid vacations, among other working conditions, as well as trade unions, strikes and dismissal compensation.

Regulations issued by the Ministry of Labour and Social Welfare (Secretaría del Trabajo y Previsión Social) outline allowable workplace practices with a focus on assessing risk, preventing accidents and educating workers on potential hazards. The safety regulations emphasize self-regulation and allow private sector "certifiers" to conduct safety inspections.

### Working hours

The work week consists of six eight-hour days for the day shift, seven-hour days for the night shift and seven and a half-hour days for a mixed shift, with a half-hour break in all cases. For every six-day work period, a worker is entitled to one day of rest with full pay. Wages are calculated on a seven-day week. Overtime is paid at twice the normal rate and may not exceed nine hours per week. Additional weekly work hours are forbidden and must be paid at triple the normal rate. Workers receive a 25% premium for Sunday work.

## 7.2 Wages and benefits

The National Minimum Wage Commission (Comisión Nacional de Salarios Mínimos) sets a three-tiered minimum wage (reflecting Mexico's three main regions). The commission is a tripartite group, comprising representatives of business, labour and government. Minimum wage increases have varied in size and frequency.

An average minimum wage hike of 4.85% was approved for 2010. The minimum wage for 2010 is MPX 57.46 per day for Mexico City, all of the states of Baja California and Baja California Sur, Acapulco, parts of Veracruz and major border cities; MXP 55.84 per day for Monterrey, Guadalajara and some other cities; and MXP 54.47 per day for the rest of the country. These are subject to a premium (often 60%–70%) for mandatory fringe benefits and premiums for work considered hazardous. Actual industry wages are higher than the legal minimum. Often, a salary

of two to three times the minimum wage is considered acceptable in many industries.

The overall burden of fringe benefits is substantial as the costs are frequently in excess of 70%-100% of payroll, depending on salary levels. The most important employee benefit is profit sharing, under which all firms must distribute 10% of their pretax profits to employees.

### Pensions

Employers must contribute a sum equal to 2% of payroll to the pension fund system, under which a private sector fund manager oversees individual retirement accounts.

### Social Security

The social security system, administered by the Social Security Institute, provides many benefits. Its programmes cover work-related accidents and illnesses, non-occupational diseases and paid maternity leave, old age and various death benefits, and unemployment insurance. The cost of the system is shared among employers, employees and the government. The employer generally picks up most of the bill with its share roughly totalling 15% of payroll.

### Other benefits

The labour legislation grants seven paid holidays annually, plus one for Inauguration Day every sixth year. Labour contracts call for another nine to 10 paid holidays. After working for a year, employees are entitled to at least six days' paid vacation, increased by two days for each of the subsequent three years. A bonus of 25% of normal pay during the vacation period is mandatory. A Christmas bonus of 15 days' pay is also obligatory and must be paid before 20 December. Companies must also contribute a sum equal to 5% of payroll to the national workers' housing institute (Infonavit); funds go into special accounts for workers.

Companies with more than 100 employees must maintain a fully equipped infirmary under the direction of a qualified doctor; firms with more than 300 employees must establish hospital facilities. A mandatory worker-training programme has added to employer costs.

Besides the mandatory fringe benefits, most labour contracts provide for such "voluntary" benefits as savings

plans, life insurance, lunches and coupons (vales de despensa) (redeemable for food and general merchandise at supermarkets). Most large companies maintain a cafeteria on the premises which provides below-cost meals to employees. Many companies supply work clothes. Some employers set up additional incentive plans to stimulate production and sales. Fringe benefits must generally be provided to all employees to qualify for tax deductions.

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Nearly 40% of Mexico's workforce is unionized; unions represent some 80% of industrial workers in establishments with more than 20 employees.

### 7.3 Termination of employment

Unless dismissed for cause (such as dishonesty or excessive absenteeism, among others under the Federal Labour Law), laid-off employees are entitled to three months' pay, plus 20 days' additional pay for every year employed. Workers employed for more than 15 years receive an additional 12 days' pay for every year of service, up to a ceiling of twice the minimum wage at the time of dismissal multiplied by 12 days and the number of years. An employee who wins a dismissal appeal receives full pay from the date of termination until the matter is judicially resolved.

Unjustifiably dismissed workers may choose between reinstatement and indemnification amounting to three months' severance pay. Employers may refuse to reinstate apprentices and workers with less than one year of service, but they must then add 20 days of pay for each year of service to the standard three months' severance pay or pay half the time worked, if less than a year.

### 7.4 Labour-management relations

Nearly 40% of Mexico's workforce is unionized; unions represent some 80% of industrial workers in establishments with more than 20 employees. Most of these workers belong to one of the nine national labour federations. Only about 20% of unionized workers belong to single-company unions; the remainder are members of nationwide organizations. Federal law requires that collective-bargaining agreements be renewed at least once every two years. Salaries must be reviewed annually.

Strikes are legal only when employers refuse to comply with a legal or contractual obligation (for example, to make or revise a union contract, to accept an award by an arbitration board or to make mandatory profit-sharing payments). A strike may also be called to support another strike, provided the majority of workers agree. Unions must follow specific procedures in instituting job actions.

# 7.0 Labour environment

## 7.5 Employment of foreigners

Mexico has several categories of immigrants, but the following are of special interest to foreign investors.

- *Cargo de confianza* status (management employee) may be obtained by foreigners who fill key executive posts or other positions of responsibility in established corporations or institutions. The Ministry of the Interior (*Secretaría de Gobernación*) will grant such status only if it is satisfied that the work is necessary and cannot be performed by a local national. Companies should apply for this status well in advance, since the process may take several months. Occasionally, a foreigner may qualify for initial non-immigrant status, which may subsequently be amended to immigrant status upon re-entry into the country.
- *Inversionista* (investor) status may be obtained by foreigners who invest in industrial activities that contribute to the economic and social development of the country. The one-year visa may be renewed up to four times and allows for multiple entries.
- *Técnico* (technician) status may be granted to persons who undertake research, technical or other specialized activities for which no qualified residents are available.

Mexico also provides immigrant status for scientists, professionals, persons with independent income, dependants of immigrants, permanent immigrants and retirees. Generally, to obtain immigrant status for employees, a company must file an application with the Ministry of the Interior and submit evidence of investment and tax payment. Some Mexican consulates grant visas directly, waiving filing requirement with the Ministry.

In general, a new company may not apply for permanent residence visas for its personnel unless the government considers its activity of importance to the nation and it has been operating for two years. If approved, the permit is granted provisionally for five years and reviewed every year.



# 8.0 Environmental

The General Law for Ecological Equilibrium and Environmental Protection ("*Ley General de Equilibrio Ecológico y la Protección al Ambiente*") is the framework law in federal environmental matters in Mexico. This law establishes environmental policy instruments that are applicable to most projects and activities developed in Mexico. Notwithstanding this framework law, there are many other regulations, statutes and norms that regulate different environmental aspects of a specific project to be developed in Mexico, including: (i) the General Law for Sustainable Forestry Development ("*Ley Federal de Desarrollo Forestal Sustentable*"); (ii) the National Waters Law ("*Ley de Aguas Nacionales*"); and (iii) the General Law for the Prevention and Integral Management of Wastes ("*Ley General para la Prevención y Gestión Integral de los Residuos*"), among others.

## Environmental Policy Instruments

The most relevant federal environmental policy instruments are: (i) environmental impact assessment; and (ii) the territorial and marine ecological ordainment; and (iii) the establishment of natural protected areas.

The feasibility of developing any project or activity from an environmental standpoint in Mexico will depend greatly on the compatibility of such project with the applicable ecological ordainment program and local urban development programs, which is evaluated mainly through the environmental impact assessment procedure.

The Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*) (SEMARNAT) and other entities which originate or are linked to the agency, will apply the federal environmental regulations and issue permits required for the development of specific activities, with the General Attorney's Office for the Protection of the Environment (*Procuraduría Federal de Protección al Ambiente*) (PROFEPA) acting as the enforcement agency.

Certain activities will fall under the jurisdiction of local environmental authorities, and thus these must comply with local regulations, which for the most part are similar to or less stringent than any federal regulations.

## Liability for Contamination / Remediation

The General Law for the Prevention and Integral Management of Wastes regulates the handling of hazardous wastes and also establishes the rules for environmental liability resulting from the acquisition of contaminated sites, as well as the rules for site remediation. The most relevant are:

- a) The owner/seller of a site contaminated with hazardous materials or wastes is obligated to inform the acquirer about the existence of the contamination.
- b) The transfer of ownership of a site contaminated with hazardous wastes requires an authorization from SEMARNAT.
- c) Owners and operators or possessors of a site contaminated with hazardous materials or wastes are jointly and severally liable for conducting any required remediation.

## Use of Coasts

The Federal Maritime Zone or "ZOFEMAT" (beach front) is considered as a public domain property and thus, its use in detriment of third parties, can only be conducted by means of a concession granted by the SEMARNAT. Concessions for the use of the ZOFEMAT area are usually granted for 15-year renewable terms and its uses results on the obligation to pay governmental fees. The fees are established in the Federal Law of Rights ("*Ley Federal de Derechos*") and vary depending on the location of the surface area of ZOFEMAT under concession and the use given to it by the concession title holder.

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