

Mexico

Foreign Investment Law (1993)

Official translation

Note

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

Contents

Title I. General provisions

Chapter I. On the purpose of the Law

Chapter II. On reserved activities

Chapter III. On activities and acquisitions under specific regulations

Title II. Acquisition of real estate, exploitation of mines and national territorial waters, and trusts

Chapter I. Acquisition of real estate, exploitation of mines and national territorial waters

Chapter II. Restricted zone real estate trust

Title III. Companies incorporation of and modification to companies

Title IV. Investments by foreign legal entities

Title V. Neutral investment

Chapter I. The concept of neutral investment

Chapter II. Neutral investment represented by instruments issued by trustee institutions

Chapter III. Neutral investment represented by special series of stocks

Chapter IV. Neutral investment in holding companies of financial groups, multiple banking institutions and brokerage offices

Chapter V. Neutral investment made by International Financial Development Institutions

Title VI. National foreign investment commission

Chapter I. Structure of the Commission

Chapter II. Duties of the commission

Chapter III. Operation of the commission

Title VII. National foreign investment registry

Title VIII. Penalties

Interim articles

Foreign Investment Law

Preamble

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Current Text

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CARLOS SALINAS DE GORTARI, Constitutional President of the United Mexican States, to its inhabitants

That the Congress of the Union, has served to address the following

Decreto

THE CONGRESS OF THE UNITED MEXICAN STATES, DECREES:

Title I. General provisions

Chapter I. On the purpose of the Law

Article 1

This law is of public policy and for general adherence throughout the Republic. Its purpose is to establish rules to attract foreign investment to the country and promote its contribution to national development.

Article 2

For the purposes hereof, the following terms shall have the following meanings:

1. Commission: the National Foreign Investment Commission;
2. Foreign investment:
 - a. Participation by foreign investors, in any percentage, in the capital stock of Mexican companies;
 - b. Investments by Mexican companies in which foreign capital has majority interest; and
 - c. Participation by foreign investors in activities and acts contemplated herein.
3. Foreign investor: an individual or entity of any nationality other than Mexican, and foreign entities with no legal standing;

4. Registry: the National Foreign Investment Registry;
5. Ministry: the Ministry of Economy;
6. Restricted Zone: a strip of the national territory one hundred kilometers wide along the borders and fifty kilometers wide along the coast, as referred to in Section I of Article 27 of the Political Constitution of the United Mexican States; and
7. Foreigners Exclusion Clause: an express agreement or covenant forming an integral part of the corporate by-laws and setting forth that such corporations shall not admit, directly or indirectly, foreign investors or corporations with foreigners admission clause, as partners or stockholders.

Article 3

For the purposes hereof, investments made in this country by foreigners with the stay status of permanent residents shall be considered Mexican investment, except those made in activities contemplated in Titles One and Two hereof.

Article 4

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. The rules for the participation of foreign investment in the activities of the financial sector provided for in this Law shall be applied without prejudice to those established by the specific laws for those activities. For the purpose of determining the foreign investment percentage in economic activities subject to certain maximum limits of foreign participation, foreign investment indirectly conducted in such activities through the stock of Mexican companies with a majority Mexican investment shall not be taken into account as long as such Mexican companies are not controlled by the foreign investment.

Chapter II. On reserved activities

Article 5

The activities determined by the relevant laws in the following strategic areas are reserved exclusively for the State:

Article 6

The economic activities and companies mentioned hereunder are reserved exclusively to Mexicans or to Mexican companies with foreigners exclusion clause:

Except as set forth in Title Five hereof, foreign investment may not participate directly in the activities and companies mentioned in this article nor through trusts, contracts, partnerships or by-law agreements, pyramiding schemes, or other mechanisms granting any control or participation.

Chapter III. On activities and acquisitions under specific regulations

Article 7

In the economic activities and corporations mentioned hereafter, foreign investment may participate in the following percentages:

1. Up to 10% in:

Cooperative companies for production;

2. Up to 25% in:

a. Domestic air transportation;

b. Air taxi transportation; and

c. Specialized air transportation;

3. Up to 49% in:

a. Repealed by an Order published in the Official Gazette of the Federation on January 19, 1999.

b. Repealed by an Order published in the Official Gazette of the Federation on January 19, 1999.

c. Repealed by an Order published in the Official Gazette of the Federation on January 19, 1999.

d. Repealed by an Order published in the Official Gazette of the Federation on January 19, 1999.

e. Repealed by an Order published in the Official Gazette of the Federation on January 10, 2014;

f. Repealed by an Order published in the Official Gazette of the Federation on January 10, 2014;

g. Repealed by an Order published in the Official Gazette of the Federation on January 10, 2014;

h. Repealed by an Order published in the Official Gazette of the Federation on January 10, 2014;

i. Repealed by an Order published in the Official Gazette of the Federation on July 18, 2006;

j. Repealed by an Order published in the Official Gazette of the Federation on July 18, 2006;

k. Repealed by an Order published in the Official Gazette of the Federation on July 18, 2006;

l. Repealed by an Order published in the Official Gazette of the Federation on January 10, 2014;

m. Repealed by an Order published in the Official Gazette of the Federation on June 4, 2001;

n. Repealed by an Order published in the Official Gazette of the Federation on June 4, 2001;

o. Repealed by an Order published in the Official Gazette of the Federation on January 10, 2014;

p. 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;

q. Printing and publication of newspapers for circulation solely throughout Mexico;

r. Series "T" shares in companies owning agricultural, ranching, and forestry lands;

s. Fresh water, coastal, and exclusive economic zone fishing not including fisheries;

t. Integral port administration;

u. Port pilot services for inland navigation under the terms of the law governing the matter;

v. 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;

w. Supply of fuel and lubricants for ships, airplanes, and railway equipment; and

x. Broadcasting. This maximum foreign investment will be subject to the reciprocity that exists in the country of constitution of the investor or economic agent who exercise control, in the last instance, directly or indirectly.

4. Repealed by an Order published in the Official Gazette of the Federation on December 24, 1996.

Except as set forth in Title Five hereof, foreign investment participation limits in the activities and companies mentioned in this article may not be surpassed directly nor through trusts, contracts, partnerships or by-law agreements, pyramiding schemes or other mechanisms granting any control or a higher participation than the one established.

Article 8

A favorable resolution by the Commission is required for foreign investment to participate in a percentage higher than 49% in the economic activities and companies referred to hereafter:

Article 9

A favorable resolution from the Commission is required for 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 determined annually by such Commission.

Title II. Acquisition of real estate, exploitation of mines and national territorial waters, and trusts

Chapter I. Acquisition of real estate, exploitation of mines and national territorial waters

Article 10

Pursuant to Section I of Article 27 of the Political Constitution of the United Mexican States, Mexican companies with foreigners exclusion clause or which have executed the agreement to which said provision refers, may acquire title to real estate in Mexico.

For companies whose by-laws include the agreement provided by Section I of Article 27, the following shall apply:

Article 10A

The foreign individuals and entities intending to acquire real estate outside of the restricted zone or to obtain concessions for the exploration and development of mines and waters anywhere within Mexico, shall previously submit before the Ministry of Foreign Affairs, a statement agreeing to the terms of Section I of Article 27 of the Political Constitution of the United Mexican States and obtain the corresponding permit from that Ministry.

When the real estate that the foreigners intend to acquire is in a municipality totally located outside the restricted zone or when they intend to obtain a concession for the exploration and development of mines or waters anywhere within Mexico, the permit will be deemed to have been granted if not expressly denied by the Ministry of Foreign Affairs by notice published in the Official Gazette of the Federation, within five business days following the date of the application.

The National Institute of Statistic, Geography and Computer Systems (INEGI) shall publish in the Official Gazette of the Federation a list of the above mentioned municipalities, as well as of those entirely located within the restricted zone. These lists will be kept updated by such Institute.

The Ministry of Foreign Affairs might determine, through General Agreements that shall be published in the Official Gazette of the Federation, circumstances in which the foreigners, in order to be entitled to the right established in this Article, may simply present before said Ministry, a statement in which they agree to the terms of Section I of Article 27 of the Political Constitution of the United Mexican States without need for a permit from the Ministry.

Chapter II. Restricted zone real estate trust

Article 11

A permit from the Ministry of Foreign Affairs is required for credit institutions to acquire, as trustees, rights to real estate located within the restricted zone, when the purpose of the trust is to allow the use and development of such property without constituting ownership rights in respect thereof, and the trust beneficiaries are:

Article 12

Use and development of real estate located in the restricted zone shall be understood as the rights for the use or enjoyment thereof, including as the case may be, the obtainment of fruits and products and, in general, any revenue resulting from profit operation and exploitation through third parties or through the trustee.

Article 13

ARTICLE 13

The duration of the trusts to which this chapter refers to shall be a maximum of fifty years, which may be renewed on request by the interested party.

The Ministry of Foreign Affairs can verify at any time compliance with the conditions under which the permits set forth in this Title are granted, as well as the filing and veracity of the contents in the announcements referred in the same.

Article 14

The Ministry of Foreign Affairs shall decide on the permits to which this chapter refers, considering the economic and social benefit that such operations imply for the Nation.

Any application to obtain a permit must be resolved upon by the Ministry of Foreign Affairs within five business days following the date of the application with the competent central administrative unit or within thirty business days if submitted before the state offices of said Ministry; otherwise, approval shall be deemed to have been granted.

Title III. Companies incorporation of and modification to companies

Article 15

The Ministry of Economy shall authorize the corporate or business names intended to be used on the incorporation of companies. The foreigners exclusion clause or the agreement provided for in Section I of Article 27 of the Constitution shall be inserted in the by-laws of the companies incorporated.

Article 16

The procedure referred to in the preceding article is required for companies that change their corporate or business name.

The companies that replace their foreigners exclusion clause with the foreigners admission clause shall notify such event to the Ministry of Foreign Affairs within thirty business days following the above mentioned change.

If these companies own real estate located in the restricted zone intended for non-residential purposes, they shall give the notice provided by Section I of Article 10 within the period set forth in the preceding paragraph.

Article 16A

Any application of the permits provided in Articles 15 and 16, shall be resolved upon by the Ministry of Economy within two business days following the date of the application.

Title IV. Investments by foreign legal entities

Article 17

Notwithstanding the provisions in any international treaty and convention to which Mexico is party, the following individuals shall obtain authorization from the Ministry:

Article 17A

The authorizations to which the preceding article refers shall be granted when the following requirements are met:

- a. That said persons prove that they are duly organized in accordance with the laws of their own country;
- b. That the corporate charter and other organizational documents are not contrary to Mexican public policy established in law; and
- c. In the case of the persons to which the preceding article, Section I refers, they shall establish themselves in the Republic or maintain an office or branch therein, or in the case of the persons to which the preceding article, Section II refers, they shall maintain a representative in the place in Mexico in which they will operate, in charge of their obligations.

Any application which meets the requirements set forth above shall be granted within fifteen business days following the date of the application. Concluded the aforesaid period without any resolution forthcoming, the application shall be deemed to have been granted.

The Ministry shall remit to the Ministry of Foreign Affairs a copy of the applications and the authorizations granted hereunder.

Title V. Neutral investment

Chapter I. The concept of neutral investment

Article 18

Neutral investment is the investment made in Mexican companies or in trusts authorized under this Title and shall not be taken into account for determining the percentage of foreign investment in the capital stock of Mexican companies.

Chapter II. Neutral investment represented by instruments issued by trustee institutions

Article 19

The Ministry may authorize trustee institutions to issue neutral investment instruments which shall solely grant pecuniary rights to their holders and, if applicable, limited corporate rights, but without granting their holders voting rights in Regular Shareholders' Meetings.

The Ministry will have a maximum period of thirty-five business days from the day immediately following application to grant or deny the authorization. Upon the lapsing of the aforesaid period without any resolution forthcoming, the application shall be deemed to have been granted.

Chapter III. Neutral investment represented by special series of stocks

Article 20

The investment in stocks without voting rights or with limited corporate rights shall be considered neutral, provided that the authorization from the Ministry is granted, and when applicable, from the National Banking and Securities Commission.

The Ministry will have a maximum period of thirty-five business days from the day immediately following application to grant or deny the authorization. Upon the lapsing of the aforesaid period without any resolution forthcoming, the application shall be deemed to have been granted.

Chapter IV. Neutral investment in holding companies of financial groups, multiple banking institutions and brokerage offices

Article 21

Repealed by an Order published in the Official Gazette of the Federation on December 24, 1996.

Chapter V. Neutral investment made by International Financial Development Institutions

Article 22

The Commission shall resolve upon the neutral investment that International Financial Development Institutions intend to perform in the capital stock of companies, in accordance with the terms and conditions set forth for such purpose in the regulations hereof.

Title VI. National foreign investment commission

Chapter I. Structure of the Commission

Article 23

The Commission shall be composed of the Ministers of the Interior; Foreign Affairs; Finance and Public Credit; Social Development; Environment, Natural Resources and Fishery; Energy; Commerce and Industrial Development; Communications and Transportation; Labor and Social Welfare; and Tourism, who may appoint an Under-Secretary as alternative. Likewise, those authorities and private and social representatives who may have relation to the issues to be addressed, may be invited to participate in the Commission sessions. These may participate with the right to speak but not to vote.

The Commission shall meet at least twice a year and will decide upon the issues within its purview by a majority vote. In case of a draw the chairman of such Commission will have a casting vote.

Article 24

The Commission shall be chaired by the Minister of Commerce and Industrial Development and shall have an Executive Secretary and a Committee of Representatives for its operation.

Article 25

The Committee of Representatives shall be composed of the civil servants appointed by each of the Ministers who sit on the Commission, shall meet at least once every four months and shall have the authority delegated to it by such Commission.

Chapter II. Duties of the commission

Article 26

The Commission shall have the following authority and powers:

Article 27

The Executive Secretary of the Commission shall have the following authority:

Chapter III. Operation of the commission

Article 28

The Commission must resolve upon the requests submitted to its consideration within a period which shall not exceed forty five business days from the date of the respective request, as set forth in the regulations hereof. If the Commission fails to resolve within the period indicated hereinabove, the request shall be considered approved as submitted. Upon express request from the interested party, the Ministry shall issue the corresponding authorization.

Article 29

In order to evaluate the requests submitted to its approval, the Commission shall observe the following criteria:

On resolving upon the legal feasibility of a request, the Commission may only impose requirements which do not distort international trade.

Article 30

For reasons of national security, the Commission may prevent acquisitions by foreign investment.

Title VII. National foreign investment registry

Article 31

The Registry shall not be public and shall be divided into the sections set forth by its regulations, which will also determine its organization, and the information which must be provided to such Registry.

Article 32

The following must register with the Registry:

1. Mexican companies in which there is participation, including through trusts, of:
 - a. Foreign investment;
 - b. Mexicans who have or acquire another nationality and who have their domicile outside Mexican territory; or
 - c. Neutral investment.
2. Those who regularly engage in business acts in Mexico, in case they are:
 - a. Foreign individuals or companies;
 - b. Mexicans who have or acquire another nationality and who have their domicile outside Mexican

territory; and

3. Trusts on shares or corporate equity interest, on real estate, and on neutral investment whereby rights in favor of the foreign investment or of Mexicans who have or acquire another nationality and who have their domicile outside Mexican territory shall be derived.

The obligation to register shall be incumbent upon the individuals and companies to which Sections I and II refer, and in the case of Section III, by the trustee institution. The registration must be done within 40 business days from the date of the creation of the company or the equity participation by foreign investment; of formalization or official recording by Public Notary of the documents relating to the foreign company; or of the creation of the relevant trust or granting of beneficial rights in favor of the foreign investment.

Article 33

The Registry shall issue registration certificates when the request contains the following data:

1. In the case of Sections I and II:

- a. Name, trade or corporate name, domicile, date of incorporation, if applicable, and main economic activity to be performed;
- b. Name and domicile of legal representative;
- c. Name and domicile of persons authorized to hear and receive notices;
- d. Name, trade or corporate name, nationality and stay status, if applicable, domicile of the foreign investors abroad or in the country and the percentage of their interest;
- e. Amount of the capital stock subscribe and paid-in or subscribed and payable; and
- f. Estimated date for startup of operations and estimated amount of total investment with a forecast schedule;

2. In the case of Section III:

- a. Name of the trustee bank;
- b. Name, trade or corporate name, domicile and nationality of the foreign investment or of the trust settler or foreign investors;
- c. Name, trade or corporate name, domicile and nationality of foreign investment or of foreign investors appointed trust beneficiaries
- d. Date of incorporation, purposes and duration of the trust; and
- e. Description, value, purposes and, if applicable, location of the property in trust.

Once the Registry has issued the registration and renewals thereof, the Registry shall have the authority to request declarations with respect to the information submitted. Notice should be given to the Registry on any modification to the information submitted as set forth in this article, pursuant to what is provided for in its Regulations.

Article 34

In the incorporation, modification, transformation, merger, spin- off, dissolution and liquidation of business corporations, civil corporations and associations and, in general, in all legal acts and instruments in which the subjects obligated to register in the Registry, under Article 32 hereof intervene on their own behalf or through representatives, the persons vested with notarial authority shall require from such persons or their representatives to provide evidence of their registration in the Registry, or in case registration is pending, evidence that they filed the request. If such evidence is not provided, said persons vested with notarial authority may authorize the public instrument, and shall inform the Registry of such failure within ten business days following the date of authorization of said instrument.

Article 35

The subjects required to register in the Registry shall annually renew their registration record, for which purpose the filing of an economic- financial questionnaire as set fort by the respective regulations shall be sufficient.

Article 36

The federal, state and municipal authorities are obligated hereby to provide the Ministry with the reports and certifications required to perform its duties under this Law and its regulatory provisions.

Title VIII. Penalties

Article 37

The Ministry will be able to revoke the authorizations granted in the case of acts performed in violation of the provisions of this Law.

The acts, covenants or partnerships and bylaw agreements declared null and void by the Ministry due to their noncompliance hereunder, shall have no legal effect between the parties and shall not be enforced before third parties.

Article 38

Infringements to the provisions under this Law and its regulatory provisions shall be subject to the following penalties:

For the purposes of this article, “wage” shall be understood as the daily general minimum wage in force in the Federal District at the time in which the violation is determined.

For the determination and imposition of any penalty, the interested party shall be previously heard and, in case of pecuniary penalties, the nature and seriousness of the violation, the earning power of the violator, the time elapsed from the date the obligations should have been performed and their compliance or regularization, and the total value of the operation shall be taken into consideration.

The Ministry shall have the authority to impose penalties, except for the violation referred to in Section V of this article and others related to Titles Two and Three, which shall be applied by the Ministry of Foreign Affairs.

The imposition of penalties referred to in this Title shall be without prejudice to the appropriate civil or criminal liabilities.

Article 39

Persons vested with notarial authority shall list, insert or add to the official file or appendix of the instruments in which they take part, the legal communications which certify the authorizations which should be issued as set forth herein. When said persons authorize instruments in which such authorizations are not listed, they shall be imposed the penalties determined by the corresponding notarial statutes and the Commercial Public Notaries Federal Law.

Interim articles

1) This Law shall become effective the day following its publication in the Official Gazette of the Federation.

2) The following statutes and decrees are hereby abrogated:

3) The following articles and provisions are repealed:

4. Until the Regulations hereof are issued, the Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment, published in the Official Gazette of the Federation on May 16, 1989, shall continue in force in all matters not contrary thereto.

5. Foreign investors and companies with foreign investment, which on the date of publication of this Law have agreed upon programs, requirements and commitments before the Commission, its Executive Secretary or the Directorate General on Foreign Investment, may submit to the consideration of such Directorate General their exemption from compliance therewith, for which purpose this unit shall reply as appropriate in a period which shall not exceed forty five business days, from the filing of the applicable request. Those foreign investors who do not take advantage of the possibility for exemption mentioned hereinabove shall perform the commitments defined previously vis á vis the Commission, public officers and entities referred to in this Article.

6. Activities of international overland passenger transportation, tourism and freight between destinations in the Mexican Territory and administration services for central bus stations for passengers

and auxiliary services are reserved exclusively to Mexicans or Mexican companies with foreigners exclusion clause. However, in the activities mentioned hereinabove foreign investment may hold an interest in accordance with the following provisions:

7. Foreign investment may hold an interest of up to 49% of the capital stock of Mexican companies engaged in activities of manufacturing and assembly of parts, equipment and accessories for the automotive industry, without prejudice to the provisions under the Decree for Promotion and Modernization of the Automotive Industry. As of the first of January of 1999, foreign investment may hold an interest of up to 100% in the capital stock of Mexican companies, without the need to obtain a favorable resolution from the Commission.

8. Foreign investment may hold up to 49% interest in Mexican companies engaged in videotext and block switching services. Effective as of July 1, 1995, foreign investment may hold up to 100% interest in the companies engaged in the aforementioned services without the need to obtain a favorable resolution from the Commission.

9. A favorable resolution from the Commission shall be required for foreign investment to hold an interest of more than 49% in the capital stock of companies which engage in building, construction and installation activities. As of January 1, 1999, foreign investment may hold an interest of up to 100% of the capital stock of Mexican companies engaged in such activities, without the need to obtain a favorable resolution from the Commission.

10. For the purposes of article 9, and until the Commission establishes the amount of the aggregate asset value referred to in such article, the amount of eighty five million pesos is established.

11. The provisions of Chapter II of Title Two hereof shall be applied to foreign investors and Mexican companies with foreigners admission clause that have real estate in trust in the restricted zone at such date when this Law becomes effective, in all matters benefitting them.