



International Agreements on Investments in Mexico

Mexico is a trustworthy country to invest into. With a population of almost 130 million habitants in 2020, with a strong national currency and clear autonomy rules for the Mexican central bank (Banco de México) and investors, invites every interested all over the world to participate into creating legal persons in the country and investing into new branches, such as oil and electricity, that are now accessible for private individuals.

According to the Secretary of Economy, Mexico has celebrated 12 of these agreements including a specific investment chapter, being some of the most relevant ones the Agreement between Mexico-European Union in June 2000 (Title 3), Transpacific Treaty with Australia, Japan, Singapore, Vietnam, Chile and others (Chapter 9), between the EFTA States (European Free Trade Association: Iceland, Norway, Switzerland and Lichtenstein) and individual treaties with Columbia, Uruguay, and others. Mexico has celebrated 29 Agreements (*Agreements for the Reciprocal Protection and Promotion of Investments (APPRIs)*) specifically designed to promote and protect investments.

National Foreign investment law (*Ley de Inversión Extranjera= LIE*)

There are three categories so foreigners may invest: as individuals, as legal entities or as shareholders who want to participate in creating a Mexican legal entity or acquiring shares of it. Individuals are required to fulfill their immigration procedure (Visa), register in the RFC (Federal taxation registration) and in the RNIE (National Registry of Foreign Investments) among others. For legal entities have to register in the RPP (Land registration that publicize commercial acts) and by the Secretary of Economy. Its shareholders also need to fulfill procedures by a public notary (there are exceptions).

As a federal law regulating foreign investments it establishes that foreign investment may participate in any proportion in the capital stock of Mexican companies, acquiring fixed assets, entering to new fields of economic activities or manufacture, open, operate, expand or relocate companies except for specific law provisions (for example, the foreigner exclusion clause).¹

There are reserved areas that art. 5 considers as “strategic” that the State leads and controls. But a constitutional reform occurred in December 2013, where the art. 27 which regulates the origin of property, in their paragraph 7 opens the possibility for private individuals to participate in the exploration and extraction of hydrocarbon and also for them to be part of specific activities related to the electric industry, which was until then, exclusive for the State.² This law considers percentages for foreigners to invest:

- a) Foreign Investment up to 10% in case of cooperative production societies
- b) Foreign Investment up to 49% for activities such as fishing, printing, and publishing newspapers, with specific reforms on the supply of fuels and lubricants for ships and aircraft and railway equipment and broadcasting.³
- c) Foreign Investment of more than 49% participation⁴ when their activities are port services to vessels, private education and construction, operation of railways (communication) among others. The requirement is: when the total value of assets of this companies at the time of submitting the acquisition request, exceeds the annually amount determined by the National Commission of Foreign Investments, then they require their approval. On May 7th, 2020 is this amount established as 20,184,671,346.26 pesos (819,024,888.58 Euros)⁵

Regulation of the foreign investment law

(Reglamento de la Ley de Inversión Extranjera)

Art. 17 I of the Foreign Investment Law in connection with art.21 of the Regulation of the foreign investments law establish that in order for foreign legal entities that want to trade in the Mexican territory, they need to submit a written request to the Secretary of Economy, where they need to include instruments like the Memorandum of association, statues by which the legal person functions, translation into Spanish, with a proxy of a lawyer before a notary and paying the rights (for new partnerships, establishment of branches, acquisition of shares and validations = 7496 pesos/302,80 Euro and for new fields of activity =1,439 pesos/58,13 Euro⁶).

¹ Art. 4 of the LIE.

² http://www.diputados.gob.mx/LeyesBiblio/pdf/1_080520.pdf

³ Letter w and x from art. 7

⁴ Art. 8 of the LIE.

⁵ Official Gazette of the Government. http://dof.gob.mx/nota_detalle.php?codigo=5592923&fecha=07/05/2020

⁶ Official site of the government <https://www.gob.mx/tramites/ficha/autorizacion-de-la-comision-nacional-de-inversiones-extranjeras/SE1089>

The National Registry of Foreign Investments is a department of the Secretary of Economy that registers foreign individuals and legal entities that carry out commercial acts in the country or Mexican companies with foreign investments in their capital stock, among others.

Specific constitutional reforms for investors

Electrical industry

On August 11th, 2014 was a law created to regulate paragraph 6 of art. 27 of the Federal Mexican Constitution, which is called “Electrical Industrial Law” (*Ley de la Industria Eléctrica*) where the National Energy Control Center (*Centro Nacional de Control de Energía*) can enter into a contract with private individuals to carry out the financing, installation, maintenance, management, operation and expansion of the infrastructure used for the transmission and distribution of electrical power according with arts. 15 and 30 of this law.

Hydrocarbon

Also, on August 11th, 2014 was the “Hydrocarbons law” (*Ley de Hidrocarburos*) created which allows in their art. 9 private individuals to actively participate in contracts.

Telecommunications

On June 2013 was modified the Federal Constitution to regulate their paragraph 6 and include the “Telecommunications” and for that on July 14th 2014 was created the “Federal law of telecommunications and broadcasting” (*Ley Federal de Telecomunicaciones y Radiodifusión*) which even though the concession is just allowed for individual or legal persons with Mexican nationality, the amount of investment it is now opened as much as the Foreign Investment Law allows it, according to art. 77 of this Law.

Real estate

The Mexican Constitution states in their art. 27 I a prohibition for foreigners to acquire the property of a land inside 100 km from the borders and 50 km from the beach (so called “restricted area”), primarily for historic reasons of invasions.

However, the Foreign investment law considers two alternatives for these two cases: **(1)** Mexican legal entities that allow foreigners and **(2)** for foreign individuals or foreign legal entities:

If foreigners want to acquire real estate OUTSIDE the restricted area, (1) they must include a clause into their statues according to Art. 27 I of the Mexican constitution which says that they shall be considered as Mexicans in terms of the Land they want the property for and that they won't plead for protection of their states. For the other case (2) it is just needed a declaration by

the Secretariat of Foreign Affairs (SRE). If foreigners want to acquire real estate INSIDE the restricted area, then will be asked for their purpose:

For non-residential purpose they can have the property of a land, but they must notify the Secretariat of Foreign Affairs (SRE).⁷ *For residential purpose* they cannot directly do it. A trust must be set up because they will never acquire the property, but they can still use the land, which right last until 50 years. This prohibition applies for both cases (1 and 2).

Corporate Law

The Mexican Corporate Law (LGSM=Ley General de Sociedades Mercantiles) establishes seven types of societies. However, the typically forms used are these four:

- Limited liability company (SRL)⁸
- Public limited company (SA)⁹
- Public limited company- investment promoter (SAPI)¹⁰
- Simplified join-stock company (SAS)¹¹

⁷ Forbidden from art. 11 II of the Foreign Investment Law for individuals and foreign legal entities.

⁸ Sociedad de Responsabilidad Limitada

⁹ Sociedad Anónima

¹⁰ Sociedad Anónima Promotora de Inversión

¹¹ Sociedad por Acciones Simplificada

	Limited liability company (SRL)¹²	Public limited company (SA)¹³	Public limited company-investment promoter (SAPI)¹⁴	Simplified join-stock company (SAS)¹⁵
<i>Characteristics</i>	This corporation one of the most popular ones in the country. The partners are only obliged to pay their contributions, without the possibility of their <i>equity interest</i> to be represented by negotiable titles, which they are indivisible.	The partners are limited to the payment of their shares. They will be of equal value and will confer equal rights in principle.	This corporation is a form of the Public limited company created in 2006 but very well-known because they can impose restrictions in principle, of any nature on the transfer of their ownership of rights, with respect to their shares. Also, it could be established the reasons why partners should be excluded, or the price of a share and the way to determine it, or the creation of specific additionally shares, according to what the Mexican corporate law already considers.	This type of corporation was created in 2016, promoting a quick way to avoid bureaucracy, in which the partners are only obligated to pay their contributions represented by their shares. They do not need a public deed from a notary and the partner(s) should not be simultaneously shareholders of another type of corporation (one of the seven ones from LGSM) if they have control of the board of directors.
<i>Founding members</i>	Minimum 2 partners up to 50 members.	Minimum 2 partners without limit.	Minimum 2 members without limit.	Minimum 1 member without limit.
<i>Legal capital</i>	There is no minimum or maximum limitation, however by the constitution must be exhibited at least 50% of the value of each equity interest.	There is no minimum or maximum limitation, however by the constitution must be exhibited at least 20% of the value of each share payable in cash.	There is no minimum or maximum limitation.	A capital up to 5,000,000.00 Mexican Pesos (206,617.50 Euros approx.)
<i>Administration</i>	General manager or a plurality of them, not necessarily partners, for a limited or unlimited period.	General administrator or a plurality of them, not necessarily partners, but for a limited period.	Board of directors.	One director that must be a partner of this corporation.
<i>Responsibility</i>	Limited to their equity interest.	Limited to the amount of their shares.	Limited to the amount of their shares.	Limited to their equity interest.

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¹² Sociedad de Responsabilidad Limitada

¹³ Sociedad Anónima

¹⁴ Sociedad Anónima Promotora de Inversión

¹⁵ Sociedad por Acciones Simplificada

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