

REFORM TO THE FOREIGN INVESTMENT LAW REGARDING NATIONAL SECURITY

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Excecutive Summary:

On November 19, 2026, the Decree amending, adding, and repealing various provisions regarding national security in the Foreign Investment Law (the "Reform") was published in the Official Gazette of the Federation.

The Reform introduces a special national security review mechanism for foreign investment that directly or indirectly holds more than 49% of the capital stock of a Mexican corporation, when a certain asset threshold -to be defined- is exceeded and the corporation operates in sectors deemed sensitive from a national security perspective.

The Reform also establishes an authorization procedure before the National Commission on Foreign Investment (the "Commission"), whose membership is expanded to include the Ministries of National Defense, the Navy, and Security and Citizen Protection, as well as the Agency for Digital Transformation and Telecommunications, and designates the Attorney General's Office, the National Intelligence Center, the Tax Administration Service, and the Financial Intelligence Unit as permanent guests -with voice but no vote-when national security issues are discussed. Furthermore, it eliminates the presumption of approval for filings involving national security and establishes a strengthened penalty regime.

The main focus of the Reform is to establish a prior review mechanism -analogous to the foreign investment screening systems in other jurisdictions- to ensure that foreign investment may hold more than 49% of the capital stock of Mexican companies whose economic activities fall under any of the categories defined by the Law itself as pertaining to national security.

National security activities include (i) strategic infrastructure (whether physical or virtual, related to the energy, transportation, healthcare, communications, mining, data processing or storage, digital systems, aerospace, and defense sectors, as well as sensitive facilities, including land and real estate essential to such infrastructure); (ii) Critical technologies and dual-use products (such as artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies, nanotechnologies, and biotechnologies); (iii) Essential inputs (including energy supply, raw materials, and food security); (iv) Sensitive information (in particular, personal data, or the ability to control such information); and (v) analogous activities determined by the Commission through a general resolution.

1. NEW NATIONAL SECURITY SCRUTINY

The Reform repeals Article 30 of the Law, which granted the Commission the general authority to block acquisitions on national security grounds, and replaces it with a system requiring prior approval for foreign investment entering Mexico. Upon its entry into force, a favorable resolution from the Commission is required when **all three of the following cumulative conditions are met:**

- **Foreign ownership exceeding 49%.** The foreign investment seeks to hold, directly or indirectly, more than 49% of the capital stock of a Mexican corporation.
- **Asset threshold.** The total value of the target company's assets exceeds the amount determined by the Commission through a general resolution to be published in the Official Gazette of the Federation within the next 180 calendar days, that is, no later than May 18, 2027.
- **Sensitive activity.** The Mexican company engages in any of the activities defined in the Act itself as relating to national security.

Furthermore, it is possible to submit a filing on a voluntary basis when the foreign investment stake to be acquired exceeds 49%, even if the company's assets do not reach the established threshold.

It is worth noting that there is uncertainty in the Reform regarding the scope of the reference to indirect ownership, particularly as to whether the inclusion of the reference to "indirect ownership" triggers scrutiny in transactions agreed upon entirely between foreign parties that, as a result of a change in control at the global level, alter the indirect ownership of a Mexican subsidiary operating in any of the listed national security sectors, and/or whether the express reference to "indirect ownership" includes ownership structures involving various levels of the corporate chain, trusts, and/or pyramid structures, for the purpose of determining whether, given such a structure, the foreign ownership exceeds the 49% threshold.

This contrasts with the treatment previously provided for in the Law for activities reserved for Mexicans or for companies with a foreign exclusion clause, as well as for those subject to percentage limits on foreign investment, with respect to which indirect participation is prohibited through trusts, agreements, articles of incorporation or bylaws, pyramid structures, or other mechanisms that confer control or participation.

2. SENSITIVE SECTORS AND ACTIVITIES

The Reform identifies five categories of activities that may be subject to national security review, following foreign investment screening models adopted in other jurisdictions:

- **Strategic infrastructure.** This includes physical or virtual facilities related to the energy, transportation, healthcare, communications, mining, data processing and storage, digital systems, aerospace, and defense sectors, as well as sensitive facilities and the land and real estate necessary for their operation.
- **Critical technologies and dual-use products.** This includes artificial intelligence, robotics, semiconductors, cybersecurity, aerospace and defense technologies, energy storage, quantum and nuclear technologies, nanotechnology, and biotechnology.
- **Essential inputs.** This covers the supply of essential goods and inputs, particularly energy and raw materials, as well as those related to food security.
- **Sensitive information.** This refers to access to sensitive information—especially personal data—or the ability to exercise control over it. Since the provision does not expressly limit its scope to personal data, it could give rise to a broad interpretation of this category.
- **Analogous Activities.** This includes any other activity or sector of a similar nature that the Commission may determine by general resolution.

The exercise of this latter authority could significantly expand the scope of transactions subject to the review mechanism by allowing for the inclusion of sectors not expressly provided for in the Law. However, any determination by the Commission must be duly substantiated and justified, without prejudice to the possibility of judicial review.

3. AUTHORIZATION PROCEDURE AND TIME LIMIT FOR ISSUING A DECISION

The filing must be submitted jointly by the Mexican company and the foreign investor to the Commission's Technical Secretariat, and the Commission will have 45 (forty-five) business days to rule on it, counted from the date of submission. Furthermore, it is established that the Federal Law on Administrative Procedure shall apply on a

supplementary basis, which provides for the possibility that the authority may issue a notice to the filing parties within the first third of the period, requiring them to correct any missing information within 5 (five) business days, with the period for rendering a decision being suspended while the matter is being addressed. Among the evaluation criteria, the Reform adds the existence of risks or threats to national security.

Unlike the general regime, under which the Commission's failure to issue a decision within the deadline implies approval of the filing as submitted, under the Federal Law on Administrative Procedure, to which the Law refers for the processing of filings involving national security matters, if the applicable deadline expires without a response from the Commission, the decision shall be deemed to be a denial.

4. POSSIBLE DECISIONS

When reviewing a filing for foreign investment in national security activities, the Commission may issue a decision in any of the following ways:

- **Feasibility.** Conclude that there are no risks or threats to national security and declare the acquisition feasible.
- **Mitigation.** Make the acquisition conditional on the parties involved modifying the project to reduce the identified risk.
- **Rejection.** Deny the acquisition on national security grounds.

Feasibility and mitigation decisions will establish specific terms and conditions for each case, which may include periodic reports by the parties and verification of compliance with the national legal system.

In matters of national security, Commission members may not abstain from voting, and decisions shall be adopted by a majority of its members.

5. FINES AND DIVESTITURE

The Reform introduces fines ranging from 596,000 pesos to over 23 million pesos for (i) the transfer of a shareholding to a foreign investor despite the authorization having been denied, or without having first obtained a favorable decision from the

Commission, or (ii) failure to comply with risk mitigation measures.

In addition to the fine, the Commission may order divestment, in accordance with the procedure to be established, for which the foreign investor will have 90 (ninety) business days from the day following notification of the sanction, extendable for an equal period.

6. OTHER RELEVANT CHANGES REGARDING THE SIMULATION OF TRANSACTIONS INVOLVING REAL PROPERTY IN RESTRICTED ZONES

Unexpectedly and without having been included in the original bill, the AReform introduces a new penalty (up to the amount of the transaction) for the simulation of acts that allow foreign individuals or legal entities (or Mexican corporations without a foreigner exclusion clause) to enjoy or dispose of real property in the restricted zone, in violation of the Law.

In addition to this penalty, the Commission may order divestiture, granting a period of 90 (ninety) business days for the foreign investor to divest the assets acquired by a company.

It will be necessary to analyze the Commission's interpretation of this new penalty and whether it is intended to—or has the effect of—affecting the thousands of restricted-zone trusts currently in existence in our country's tourist areas.
If you have any questions regarding the content of the Reform, please do not hesitate to contact us.

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