



DOING BUSINESS *IN MEXICO*

2020

VTZ

VAZQUEZ TERCERO & ZEPEDA
ABOGADOS



FOREIGN INVESTMENT INTRODUCTION

As a result of Mexico's Trade and Investment Promotion Agency -PROMEXICO– extinguishment, **Vázquez Tercero & Zepeda (VTZ)** seeks to fill that void and promote Mexico as a business destination.

This is why **VTZ** has developed the guide **Doing Business in Mexico 2020**, which is divided into the following seven chapters:

1. *Why Invest in Mexico?*
2. *Foreign Investment.*
3. *International Trade Policy.*
4. *Trade Policy for the Manufacturing Industry.*
5. *Creating a Company in Mexico.*
6. *Taxation.*
7. *Labor & Migration.*

In line with our values, our chapters seek to provide relevant business and legal information in an honest, practical, and concise manner. This chapter, *Foreign Investment in Mexico*, will provide a general overview of the rules and restrictions on foreign capital in Mexico.

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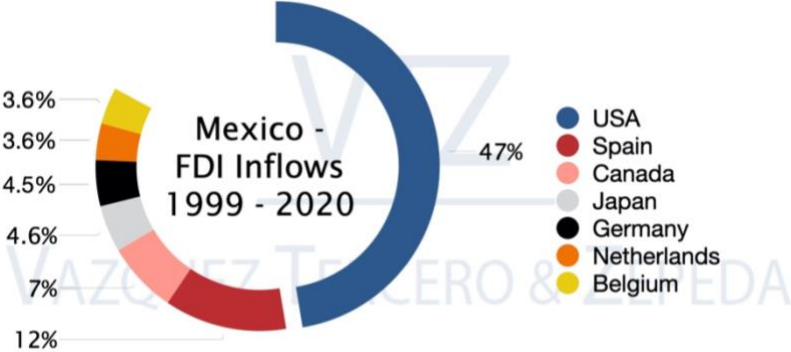
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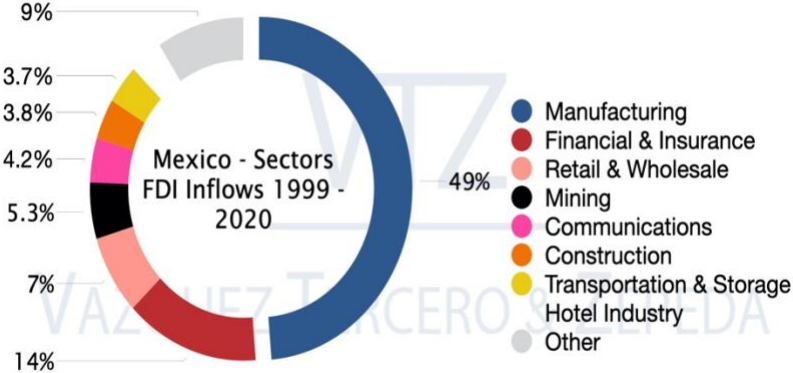
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2. Foreign Investment in Mexico

Mexico is an open economy that embraces foreign investment. According to foreign direct investment statistics from 1999-2020, almost half of Mexico’s FDI comes from the USA, followed by Spain, Canada, Japan, and Germany. For more information on FDI inflows per country, see **Appendix 1 – Table: Top FDI Inflows per Country**.



Interestingly, China is a major exporting capital country in the world. In fact, Chinese investment in Latin America and the Caribbean has had a sharp increase in the last years. However, that has not been the case in Mexico. Chinese investment in Mexico only represents around 0.2% of the total foreign direct investment in Mexico, according to official statistics of the Mexican Ministry of Economy.



As for economic sectors, FDI inflows have focused mainly on the manufacturing sector, followed by financial services, international trade, mining, construction, transportation, and hotel industry. For more information on FDI inflows per the economic sector, see **Appendix 2 – Table: Top FDI Inflows**

per Economic Sector.

In this chapter, Vtz will provide an overview of the foreign *investment restrictions* applicable to economic sectors and real estate, the role of the authorities regarding investment authorizations, and the Bilateral Investment Treaties.

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2.1 General Context of Foreign Investment Law in Mexico

As a general rule, foreign investment is authorized without restrictions in territory of Mexico, unless the *Foreign Investment Law* expressly includes a limitation. In other words, Mexico does not have a special zone where foreign investment rules are more “flexible” as investment promotion policies because it has adopted a “negative list” approach that applies throughout its territory.

The foreign investment prohibitions or restrictions are based on Mexico’s history, national security grounds as well as protectionism for economic sectors. Needless to say, Mexican Congress has lifted foreign investment restrictions throughout the years.

Foreign Investors, either individuals or legal persons, may invest in Mexico by opening a branch, incorporating a Mexican entity, or through other legal instruments including trusts, joint ventures, franchises, etc. Depending of the activity, the relevant law may require foreign investors to have a “local presence” or incorporate a Mexican enterprise in order to carry out activities, for instance, banking services, telecommunications, FINTECH, energy, among other.

Foreign investors or their investments are subject to specific corporate and administrative legal duties. For instance, an enterprise with foreign capital requires to include in its by-laws a clause that admits foreigners as shareholders or partners; foreigners, branches, enterprises, and trusts with foreign capital must register before the **National Registry of Foreign Investment** and are subject to reporting obligations. Failure to comply with such obligations, fines would apply.

As noted above, foreign investors may normally participate, directly or indirectly, in the equity of a Mexican enterprise without any limitation in the territory of Mexico. However, the *Foreign Investment Law* prohibits or restricts foreign investment in certain economic sectors or activities. In addition, the Mexican Constitution and the Foreign Investment Law also may restrict whether foreign investment may purchase land or real estate in Mexico.

2.2 Prohibited Economic Sectors for Foreign Investment in Mexico

From a *practical* standpoint of view, the Foreign Investment Law expressly prohibits foreign investment in “ten” general economic sectors that are classified as “activities reserved to the Mexican State” or “activities reserved to Mexicans”.

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Appendix 1 – Table: Top FDI Inflows per Country

Rank	Country	FDI Inflows 1999-2020	
		Value (USD, million)	Share
1	USA	318,957.5	47.1%
2	Spain	70,898.1	12%
3	Canada	41,472.1	7%
4	Japan	27,052.5	4.6%
5	Germany	26,706.2	4.5%
6	Netherlands	21,021.7	3.6%
7	Belgium	20,959.1	3.6%
8	UK	17,618.7	3%
9	France	9,428.4	1.6%
10	Argentina	8,413.2	1.4%
11	Italy	8,237.1	1.4%
12	Switzerland	7,567.9	1.3%
13	Korea	6,927.6	1.2%
14	Brazil	5,581.4	.9%
15	Australia	4,581.2	0.8%
22	China	1,333.1	.2%
25	Hong Kong	1,050.3	.2%
26	Taiwan	1,066.9	.2%
	Total	589,355.8	100%

Source: Ministry of Economy (January – March 2020)

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Appendix 2 – Table: Top FDI Inflows per Economic Sector

Rank	Sector	FDI Inflows 1999-2020	
		Value (USD, million)	Share
1	Manufacturing	286,819	48.7%
2	Financial Services and Insurance	83,872.7	14.2%
3	Mining	31,309.6	5.3%
4	Communications	25,006.2	4.2%
5	Construction	22,239.7	3.8%
6	Retail	22,109.4	3.8%
7	Wholesale	21,842.5	3.7%
8	Transport and storage	21,958.7	3.7%
9	Hotel and preparation of food and beverage services	20,612.1	3.5%
10	Electricity, Water, Water Supply	18,510	3.1%
11	Real estate and Leasing services	17,017.7	2.9%
12	Professional, Science and Technical Services	7,029.8	1.2%
13	Business Support and Waste management services	6,477.6	1.1%
14	Agro	1,7531.1	.3%
15	Other Services except government activity	858.6	.1%
16	Education Services, Cultural and sports	445.5	0.1%
17	Health Services	244.3	0.0%

Source: Ministry of Economy (January – March 2020)

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Appendix 3 – Table: ISDS cases

A. Concluded

	Case	Year (Award)	Sector	BIT/IIA	Result
1	Joshua Dean Nelson vs Mexico (Tele Fácil México)	2020	Telecommunications	NAFTA	No violation
2	Técnicas Medioambientales Tecmed, S.A. vs Mexico	2003	Waste Management	BIT-Spain	Violation (\$5,533,017.12 USD + interests)
3	Cemusa - Corporación Europea de Mobiliario Urbano, S.A. and Corporación Americana de Equipamientos Urbanos, S.L. vs Mexico	2014	Urban Furniture (Construction Activities)	BIT-Spain	No Decision (Discontinuance of the Proceeding)
4	Telefónica S.A. vs Mexico	2018	Telecommunications	BIT-Spain	No Decision (Discontinuance of the Proceeding)
5	Abengoa , S.A. y COFIDES, S.A. vs Mexico	2013	Water, Sanitation & Flood Protection	BIT-Spain	Violation (\$535,302,964.62 Mx pesos + property)
6	Bayview Irrigation District and others vs Mexico	2014	Agriculture	NAFTA	No violation (No jurisdiction)
7	Fireman's Fund Insurance Company vs Mexico	2006	Financial	NAFTA	No violation
8	Waste Management, Inc. vs Mexico	2000	Waste Disposal	NAFTA	No violation (No jurisdiction)
9	Waste Management, Inc. vs Mexico II	2004	Waste Disposal	NAFTA	No violation
10	Marvin Roy Feldman Karpa vs Mexico	2002	Cigarette (Tax & Customs Related)	NAFTA	No violation & Violation (\$9,464,627.50 Mx Pesos + Interests)

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12	Robert Azinian and others vs Mexico	1999	Waste Disposal	NAFTA	No violation
13	Metalclad Corporation vs Mexico	2000	Waste Disposal	NAFTA	Violation (16 million USD)
14	Cargill , Incorporated vs Mexico	2009	Soft drink sweetener production enterprise	NAFTA	Violation (60 million USD)
15	Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. vs Mexico	2007	Soft drink sweetener production enterprise	NAFTA	Violation (33 million USD)
16	Gemplus , S.A., SLP, S.A., Gemplus Industrial, S.A. de C.V., Talsud, S.A. vs Mexico	2010	Concession agreement to operate the National Registry of Motor Vehicles	France-Mexico BIT Argentina - Mexico BIT	No Violations & Violation (4,483,164 USD - Gemplus) (6,458,721 USD-Talsud)
17	Thunderbird vs Mexico	2006	Gambling	NAFTA	No violation
18	GAMI Investments, Inc. vs Mexico	2004	Sugar	NAFTA	No violation
19	Corn Products International, Inc. vs Mexico	2004	Soft drink sweetener production enterprise	NAFTA	No Violations & Violation (58,386,288 USD)
20	Vento Motorcycles, Inc. vs Mexico	2020	Manufacturing of Transport Goods (Trade-Related)	NAFTA	No violation

Source: <https://icsid.worldbank.org/en/Pages/cases/AdvancedSearch.aspx>

B. Active Cases

	Case	Year (Registration)	Sector	IIA
20	Odyssey Marine Exploration, Inc. vs Mexico	2019	Mining Concession	NAFTA
21	Espirito Santo Holdings, LP vs Mexico	2020	Telecommunications concession (Taxis app)	NAFTA
22	Terence Highlands vs Mexico	2019	Maritime Transport Services	UK

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23	Alicia Grace and others vs Mexico (Oro Negro)	2018	Oil exploration and production equipment	NAFTA
24	Legacy Vulcan, LLC vs Mexico	2019	Limestone extraction and exportation	NAFTA
25	PACC Offshore Services Holdings Ltd vs Mexico	2018	Marine services	Singapore
26	Eutelsat S.A. vs Mexico	2017	Telecommunications Concession	France
27	B-Mex, LLC and others vs Mexico	2016	Gambling	NAFTA
28	Lion Mexico Consolidated L.P. vs Mexico	2015	Real Estate (Legal-related)	NAFTA
29	Shanara Maritime International, S.A. and Marfield Ltd. Inc.	2014	Marine services	Panama
30	Carlos Saste	2020	Real Estate (Tourism)	Argentina, Spain and Switzerland
32	Coöperatieve Rabobank U.A.	2020	Maritime transport services	BIT - Netherlands

Source: <https://icsid.worldbank.org/en/Pages/cases/AdvancedSearch.aspx>
<https://www.gob.mx/se/acciones-y-programas/comercio-exterior-solucion-de-controversias?state=published>

C. Letters of Intention

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Case	Year	Sector	IIA
Primero Mining Corp	2016	Mining (Tax-related)	NAFTA
Dal Tile Corporation y Dal Tile Internacional	2018	Ceramics (Private Legal Dispute-related)	NAFTA
Jinlong Dongli Minera Internacional	2018	Mining (customs related)	China-Mexico
Renaud Jacquet	2019	Real Estate	Mexico-France NAFTA

Source: <https://www.gob.mx/se/acciones-y-programas/comercio-exterior-solucion-de-controversias?state=published>

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