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.
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.

Emilio Arteaga Vázquez, Jr. Partner
VTZ’s Doing Business in Mexico Coordinator
emilio@vtz.mx
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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.
FOREIGN INVESTMENT IN MEXICO

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

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

Source: Ministry of Economy (January – March 2020)
### Appendix 2 – Table: Top FDI Inflows per Economic Sector

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

Source: Ministry of Economy (January – March 2020)
## Appendix 3 – Table: ISDS cases

### A. Concluded

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

<table>
<thead>
<tr>
<th>Case</th>
<th>Year (Registration)</th>
<th>Sector</th>
<th>IIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert Azinian and others vs Mexico</td>
<td>1999</td>
<td>Waste Disposal</td>
<td>NAFTA</td>
</tr>
<tr>
<td>Metalclad Corporation vs Mexico</td>
<td>2000</td>
<td>Waste Disposal</td>
<td>NAFTA</td>
</tr>
<tr>
<td>Cargill, Incorporated vs Mexico</td>
<td>2009</td>
<td>Soft drink sweetener production enterprise</td>
<td>NAFTA</td>
</tr>
<tr>
<td>Archer Daniels Midland Company and Tate &amp; Lyle Ingredients Americas, Inc. vs Mexico</td>
<td>2007</td>
<td>Soft drink sweetener production enterprise</td>
<td>NAFTA</td>
</tr>
<tr>
<td>Gemplus, S.A., SLP, S.A., Gemplus Industrial, S.A. de C.V., Talsud, S.A. vs Mexico</td>
<td>2010</td>
<td>Concession agreement to operate the National Registry of Motor Vehicles</td>
<td>France-Mexico BIT</td>
</tr>
<tr>
<td>Thunderbird vs Mexico</td>
<td>2006</td>
<td>Gambling</td>
<td>NAFTA</td>
</tr>
<tr>
<td>GAMI Investments, Inc. vs Mexico</td>
<td>2004</td>
<td>Sugar</td>
<td>NAFTA</td>
</tr>
<tr>
<td>Corn Products International, Inc. vs Mexico</td>
<td>2004</td>
<td>Soft drink sweetener production enterprise</td>
<td>NAFTA</td>
</tr>
<tr>
<td>Vento Motorcycles, Inc. vs Mexico</td>
<td>2020</td>
<td>Manufacturing of Transport Goods (Trade-Related)</td>
<td>NAFTA</td>
</tr>
</tbody>
</table>

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

### B. Active Cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Year (Registration)</th>
<th>Sector</th>
<th>IIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Odyssey Marine Exploration, Inc. vs Mexico</td>
<td>2019</td>
<td>Mining Concession</td>
<td>NAFTA</td>
</tr>
<tr>
<td>Espiritu Santo Holdings, LP vs Mexico</td>
<td>2020</td>
<td>Telecommunications concession (Taxis app)</td>
<td>NAFTA</td>
</tr>
<tr>
<td>Terence Highlands vs Mexico</td>
<td>2019</td>
<td>Maritime Transport Services</td>
<td>UK</td>
</tr>
<tr>
<td>Case Number</td>
<td>Parties</td>
<td>Year</td>
<td>Industry/Activity</td>
</tr>
<tr>
<td>-------------</td>
<td>---------------------------------</td>
<td>------</td>
<td>--------------------------------------------------------</td>
</tr>
<tr>
<td>23</td>
<td>Alicia Grace and others</td>
<td>2018</td>
<td>Oil exploration and production equipment</td>
</tr>
<tr>
<td></td>
<td>vs Mexico (Oro Negro)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Legacy Vulcan, LLC</td>
<td>2019</td>
<td>Limestone extraction and exportation</td>
</tr>
<tr>
<td></td>
<td>vs Mexico</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>PACC Offshore Services Holdings Ltd</td>
<td>2018</td>
<td>Marine services</td>
</tr>
<tr>
<td></td>
<td>vs Mexico</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Eutelsat S.A.</td>
<td>2017</td>
<td>Telecommunications Concession</td>
</tr>
<tr>
<td></td>
<td>vs Mexico</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>B-Mex, LLC and others</td>
<td>2016</td>
<td>Gambling</td>
</tr>
<tr>
<td></td>
<td>vs Mexico</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Lion Mexico Consolidated L.P.</td>
<td>2015</td>
<td>Real Estate (Legal-related)</td>
</tr>
<tr>
<td></td>
<td>vs Mexico</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Shanara Maritime International, S.A. and Marfield Ltd. Inc.</td>
<td>2014</td>
<td>Marine services</td>
</tr>
<tr>
<td>30</td>
<td>Carlos Saste</td>
<td>2020</td>
<td>Real Estate (Tourism)</td>
</tr>
<tr>
<td>32</td>
<td>Coöperatieve Rabobank U.A.</td>
<td>2020</td>
<td>Maritime transport services</td>
</tr>
</tbody>
</table>

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

C. Letters of Intention
## FOREIGN INVESTMENT IN MEXICO

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

Source: [https://www.gob.mx/se/acciones-y-programas/comercio-exterior-solucion-de-controversias?state=published](https://www.gob.mx/se/acciones-y-programas/comercio-exterior-solucion-de-controversias?state=published)
1. **Why Invest in Mexico?**
   **Author:** Emilio Arteaga
   **Contributors:** Dora Luz and Susana Muñoz

2. **Foreign Investment.**
   **Author:** Emilio Arteaga
   **Contributors:** Dora Luz

3. **International Trade & Customs Policy.**
   **Author:** Emilio Arteaga
   **Contributors:** Dora Luz, Mariana Rivera, Adrián Vázquez, Verónica Vázquez, and Mariana Malváez.

4. **Policy for the Manufacturing Industry.**
   **Authors:** Mariana Malváez and Alejandro Martínez
   **Contributors:** Dora Luz and Mariana Rivera

5. **Creating a Company in Mexico.**
   **Author:** Emilio Arteaga
   **Contributors:** Dora Luz, Juan Pablo García, Irela López, and Mariana Rivera

6. **Taxation**
   **Author:** Jorge Montes
   **Contributors:** Dora Luz and Mariana Rivera

7. **Labor & Migration.**
   **Author:** Rafael Alday
   **Contributors:** Dora Luz, Emilio Arteaga, and Mariana Rivera

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