Doing business in Mexico

Daniel del Río, Jorge De Presno, Alejandro Barrera, Gerardo Hernandez, Amilcar Peredo and Adolfo Athie
Basham, Ringe y Correa

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OVERVIEW

1. What are the key recent developments affecting doing business in your jurisdiction?

Labour law reform has recently been approved in the Mexican Congress.

Enrique Peña Nieto, the new President of Mexico assumed office on 1 December 2012. Therefore reforms of tax, energy and telecommunications among others, including infrastructure projects, should be expected.

LEGAL SYSTEM

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

Mexico has a civil law system. It is organised as a federal system of government, divided into three branches:

- Executive.
- Legislative.
- Judicial.

FOREIGN INVESTMENT

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Foreign investors can participate in any proportion in the capital of any Mexican corporation or partnership (Article 4, Foreign Investment Law 1993), except for activities reserved for the state or activities reserved exclusively for Mexicans or Mexican companies (with the exclusion of the foreign persons clause). Therefore, foreign investors may:

- Engage in any business.
- Manufacture new product lines.
- Open and operate establishments.
- Enlarge or relocate already existing establishments.

There are restrictions on foreign investment in the following sectors:

- Petroleum (including all other hydrocarbons).
- Electricity.
- Nuclear energy.
- Radioactive minerals.

- Media.
- Railroad.
- Postal services.

4. Are there any restrictions on doing business with certain countries or jurisdictions?

There are no restrictions on doing business with certain countries or jurisdictions. However, the bye-laws and other documents of foreign companies must not be contrary to the rules of public order established by Mexican law.

5. Are there any exchange control or currency regulations?

There are no exchange control or currency regulations in Mexico.

6. What grants or incentives are available to investors?

There are some tax, labour and trade incentives for foreign investors, for example:

- The Department of Economy has created a number of programmes that promote investment in different areas:
  - Manufacturing, Maquila, and Export Services Industry (IMMEX). Companies with an approved IMMEX programme can temporarily import materials, machinery and equipment necessary for the manufacture of goods to be transformed and exported.
  - Programme for the Advancement of Specific Industry Sectors (Programas de Promoción Sectorial) (PROSEC). This is a duty relief mechanism that allows the import of certain raw materials, machinery and equipment at preferential duty rates, regardless of origin. PROSEC rates are usually between 0% and 5%, and are granted on the condition that the programme participant produces only a limited range of finished products (in 22 specified sectors).
  - Additional federal programmes exist to reimburse import duties and/or value added tax (VAT) under certain conditions, benefitting companies that export goods (for example, ALTEX and Drawback). State and local governments also run programmes which vary from area to area.
  - Free trade agreements (FTAs) are also a way to incentivise investment and promote the export of goods produced in Mexico. Mexico has entered into 12 FTAs (including with the US, EU and Japan), giving Mexican products preferential duty access to the world’s largest markets. Mexican companies enjoy preferential import duties on imports from FTA signatories.
BUSINESS VEHICLES

7. What are the most common forms of business vehicle used in your jurisdiction?

The General Corporation Law (GCL) recognises six types of commercial structure, which are:

- General partnership (Sociedad en Nombre Colectivo).
- Limited partnership (Sociedad en Comandita Simple).
- Limited liability company (Sociedad de Responsabilidad Limitada).
- Limited liability stock corporation (Sociedad Anónima (SA)).
- Limited partnership with shares (Sociedad en Comandita por Acciones).
- Co-operative association (Sociedad Cooperativa).

In addition to these commercial structures, the Securities Law recognises investment promotion companies (Sociedad Anónima Promotora de Inversión).

Limited liability stock corporations followed by limited liability corporations are the most commonly used structures since they both provide limited liability to the partners/shareholders (up to the amount of their contributions). Limited liability stock corporations operate under a company name and are formed exclusively by shareholders whose liability is limited to paying for their shares as capital contributions.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration and formation

To register a new SA, a permit must be obtained from the Ministry of Economy to be able to use the corporate name. The Ministry keeps a list of the names approved in the past and does not approve names already given out, though companies already dissolved or liquidated are not on record.

The incorporation process involves the following steps:

- Review and approval of the corporate by-laws.
- Issuance of a power of attorney by the partners/shareholders to incorporate the new company.
- Designation of managers/directors, officers and examiners (comisarios, which is usually a member of the external auditing firm).
- Granting by the new company of powers of attorney to those people that will be in charge of day-to-day operations.
- The notarisation of the articles of the company before a Mexican notary public.

Once the company is incorporated before a Mexican notary, the following registration procedures must be completed:

- Register the public instrument containing the articles of incorporation with the Public Registry of Commerce corresponding to the corporate domicile of the company.
- File an application for a federal taxpayers' registration number and identification card. To do this, powers of attorney are needed (usually in favour of the company’s accountant) to represent the company before the Treasury Department. It is also necessary to have a physical location for the Mexican entity.

Under the Foreign Investment Regulations, companies with foreign investment must file an application for registration with the Foreign Investment Registry within 40 business days of the incorporation of the company or the equity participation by foreign investment. The company must maintain updated corporate information with the Registry. Notices must be filed regarding, among others, any:

- Amendment of corporate bye-laws.
- Change in tax domicile or place of business domicile.
- Change in legal representative (for said Registry).
- Variations of capital (increase or decrease).
- Variations to the partners of the company (including name changes, transfer of partnership interests, mergers, spin-off, liquidation of partners).
- Mergers, spin-off, liquidation.

These notices must be filed within 40 working days following their occurrence. Late filing carries the imposition of fines to be determined at the time when the information is actually filed.

If the new company decides to import any products not restricted by law, it will have to apply for an import and export permit (see Question 24).

Reporting requirements

The board of directors/board of managers must submit an annual report to the partners’ or shareholders’ meeting containing details of:

- The progress of the company’s business.
- The company’s financial situation (financial statements). The examiners provide this.
- The main accounting policies followed in the preparation of financial information.
- Any modification in the company’s financial results.
- Any modifications to the company’s capital stock.

Generally, it is not necessary to register these annual reports in any Public Registry of Commerce, since they are required to be submitted only for corporate and accounting purposes. However, where a special power of attorney for negotiable instruments is granted or a modification of the members of the Board of Directors/Board of Managers is agreed in a meeting, this must be notarised and submitted for registration before the Public Registry of Commerce. Registration also applies on an increase or reduction in the fixed portion of the capital stock of the company, as agreed in an extraordinary shareholders’ meeting.

Share capital

A minimum of two shareholders is required to incorporate an SA. The authorised capital must be fully subscribed to within one year. The company may also be formed as a variable capital corporation or its abbreviation (SA de CV). This type of company has the flexibility to make capital contributions or withdrawals without having to change its articles of incorporation.

Non-cash consideration

The partners/shareholders can pay for shares in cash or by non-cash contributions.

Rights attaching to shares

Restrictions on rights attaching to shares. An SA forbidden to acquire its own shares, except by judicial adjudication in payment of the company credits. Since this restriction is a legal provision contained in Article 134 of the General Corporations Law, it is enforceable whether it is established in the articles of incorporation or not.

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**Automatic rights attaching to shares.** An SA can issue limited voting right shares and neutral shares, and each share has right to one vote.

9. **In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.**

**Management structure**

The general shareholders’ meeting (for an SA) is the supreme management body of any company and it operates through the shareholders. This meeting has the right to appoint and remove the board of directors/sole director.

The day-to-day management of the corporation is entrusted to a sole director or a board of directors.

The meeting may agree and ratify all acts and operations of the company (CGL). In addition, shareholders can determine the scope of, and limits to, the duties of the directors/managers by the provisions agreed in the bye-laws.

**Management restrictions**

Under the Immigration Law and General Population Law Regulations, foreign nationals or expatriates are entitled to render services as managers of Mexican entities, provided that the National Immigration Institute issues the proper immigration form. Before performing any activity in Mexico, companies, as well as foreign nationals, must notify the immigration authorities in order to obtain approval (see Question 12).

**Directors’ and officers’ liability**

The directors' and officers' liability in a company is governed by the company's bye-laws. The CGL provides the rights and duties of the board members, which include:

- To protect the company's interests.
- To represent the members' or shareholders' interests.
- To carry out or conduct the resolutions adopted by the partners' or shareholders' meeting.
- To manage the company with the same care that would be expected to be exercised in the management of the members' personal business.

Managers and directors are:

- Jointly liable with the company to ensure the performances of members' or shareholders' resolutions.
- Liable for damages suffered by the company as a result of their misconduct.
- Responsible for the management of the company.

**Parent company liability**

Parent companies are not liable for their subsidiaries' liabilities. A parent company's liability is limited to the total amount of its capital contribution to the subsidiary.

**EMPLOYMENT**

**Laws, contracts and permits**

10. **What are the main laws regulating employment relationships?**

The main laws that regulate employment relationships are the:

- Employees National Housing Fund Institute Law 1972.

These laws are mandatory irrespective of any choice of a foreign law in the employment contract and apply to:

- All those who work in Mexico, whether or not they are Mexican citizens.
- Mexican citizens working abroad if they are employed by a Mexican company.

11. **Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?**

Every employee must enter into a written individual employment agreement that sets out the terms and conditions of employment. The absence of an employment contract does not affect the existence of an employment relationship or the employment rights granted by law to the employee.

The following terms are implied into an employment contract:

- A mutual duty of trust and confidence.
- The legal grounds for dismissal.
- Certain minimum benefits which cannot be waived or contracted out of.

Collective bargaining agreements (CBAs) govern employment relationships between unions and employers. Internal labour regulations usually govern employment relationships, but are only effective if they are registered with the Conciliation and Arbitration Labour Board.

12. **Do foreign employees require work permits and/or residency permits?**

Non-Mexicans have a visa to do business of any kind or work in Mexico.

Mexican immigration policy classifies foreign nationalities into three groups:

- Unrestricted.
- Regulated.
- Restricted.

The available visas for all nationality categories are:

- Multiple immigration form (FMM).
- FM-3, a temporary residence permit.
- FM-2, a permanent residence permit.

Foreign nationals coming to Mexico to live and work must obtain an FM-3 or FM-2 visa, for a temporary or permanent stay, from the National Immigration Institute of the Department of the Interior. An FM-3 visa is the most appropriate when non-Mexicans come to Mexico to live and work, but without the intention of living there permanently. There are certain documents that must accompany a visa application, including:

- Current passport.
- Assignment letter signed by an authorized officer of the sponsoring company, notarised and apostilled or legalised. (This is applicable when the foreign national receives the salary through the sponsoring company.)
• Supporting letter signed by an authorised officer of the Mexican company which should contain the reasons related to the allocation of the employee in Mexico.
• Proxy letter signed by the Mexican company’s officer.
• Current bye-laws of the Mexican company.
• Original university degrees.

The initial cost in government fees depends on the type of permit and varies from US$20 to about US$300 while the annual cost of renewals is about US$100 to US$190. The time for obtaining permits also varies but usually does not exceed 35 days.

**Termination and redundancy**

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees are not entitled to management representation and/or to be consulted in relation to corporate transactions.

14. How is the termination of individual employment contracts regulated?

Articles 47, 51 and 53 of the Federal Labour Law govern the termination of individual employment contracts and labour relationships.

There is no employment at will in Mexico and therefore there must be a justified cause for dismissal in order to be able to terminate an employee’s employment relationship without liability for the employer. Justified causes of dismissal include (Article 47, Federal Labour Law):

• The provision of a false employment reference. This ground cannot be used after the employee has completed 30 days’ employment.
• Dishonest or dishonourable conduct, violence, threats or ill treatment towards, among others, the employer and other employees, except in the case of provocation or self defence.
• Immoral conduct in the workplace.
• Refusal to fulfil contractual obligations without sufficient reason.
• Attending work under the influence of alcohol or drugs.

The employer must serve a written notice on the employee indicating the date of, and reason for, dismissal. Failure to serve this notice in itself constitutes unjustified dismissal. A severance payment is not required for justified dismissals. However, the employer has the burden of proving the dismissal’s justification.

There is no notice period and therefore no pay in lieu of notice.

An employee can sue his employer in an action filed before the Conciliation and Arbitration Labour Board for unjustified dismissal and seek either:

• Reinstatement.
• Severance payment, which consists of three months’ salary, any other fringe benefits and back salary.

In certain circumstances, if the employer refused to reinstate the employee, it must pay three months’ salary as severance, plus 20 days of salary for each year of service, any other fringe benefits and back salary. This also applies if the employee files a complaint for constructive dismissal against the employer due to unilateral modification of employment conditions.

15. Are redundancies and mass layoffs regulated?

A collective redundancy occurs if the company (permanently) either:

• Ceases to operate.
• Closes a department or specific part of the business, leading to a reduction of personnel in the area or department concerned.

In these circumstances an employer must negotiate with the trade union if it plans to make union employees redundant or introduce any amendments to a CBA. After negotiations, an agreement must be signed and registered with the Labour Board before terminating employment contracts. The CBA must also be terminated so that the employer can freely dispose of its real estate and movable property.

The following grounds can represent a legal basis for collective redundancy (Federal Labour Law):

• Force majeure not attributable to the employer (written notice must be given to the Labour Board).
• Inability to operate at a profit (the Labour Board’s prior approval is required).
• Exhaustion of natural resources in an extractive industry such as mining (the Labour Board’s prior approval is required).
• Bankruptcy resulting in the permanent closure of the company or reduction in its operations (the Labour Board’s prior approval is required).

In all cases (except if the redundancy is due to the exhaustion of natural resources in an extraction industry), employees are entitled to severance pay equivalent to three months’ salary and to a premium based on their length of service. This premium is equivalent to 12 days’ salary for each year worked in the company.

If employees are made redundant due to a modernisation plan (for example, instalation of new machinery or adoption of new production processes), they are entitled to four months’ salary in one single payment and 20 days’ salary for every year worked in the company as compensation (Article 439, Federal Labour Law). Unions sometimes demand extra compensation be paid. In addition, both employees who belong to a trade union and management employees who do not belong to a union, can receive salary and fringe benefits up until the date on which their contracts are terminated.

**TAX**

**Taxes on employment**

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

An employee is tax resident if:

• He establishes his dwelling place in Mexico. According to case law this is the individual’s ordinary home.
• If the employee has two dwelling places (one in Mexico and the other in another country) the employee is considered resident in the place where his or her centre of vital interests is located. The centre of an individual’s vital interests is considered to be in Mexican territory, when, among other cases:
  - more than 50% of his income derives from Mexican sources of wealth; or
  - the main centre of his professional activities is located in Mexico.
17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees
Tax resident employees must pay income tax and their share of social security contributions on their total income, regardless of its source. Income tax is payable at the rate applicable for the bracket in which the employee’s income falls. Currently, the lowest rate is 1.92% and the top rate is 35%.

Social security contributions at the following rates apply on the employees’ consolidated income and are withheld by the employer (Social Security Law):
- Disability and life insurance. The employer must pay 1.75% and the employee 0.625% (a total of 2.375%).
- Retirement pensions, unemployment and old age. The employer must pay 2% to 3.15% and the employee 1.125% to 2% (a total of 3.125% to 5.15%).
- Health and maternity insurance. The employer must pay 21.65% and the employee 2.625% (a total of 24.275%).
- Occupational risk. The employer must pay 0.54% to 7.59%.
- Day-care. The employer must pay 1%.

In summary, the employer must pay 26.94% to 35.14%, and the employee 4.375% to 5.25%, for a total contribution of 31.315% to 40.39%.

Non-tax resident employees
Non-tax resident employees are exempt from income tax if both:
- They remain in Mexico for less than 183 days within a given 12-month period (consecutive or not).
- Wages are paid by a foreign resident.

If the employee remains in Mexico for more than 183 days or his salary is paid by a Mexican resident, he must pay income tax on Mexico-source income at the following marginal rates:
- 0% up to MXN125,900.
- 15% on income of between MXN125,901 and MXN1 million.
- 30% on all income over MXN1 million.

These rates are different than the rates for tax residents, although the top rate is the same.

Employers
In most states, employers must pay a payroll tax, generally at a 2% rate on the total payroll.

Employer’s social security contributions are detailed above, see Tax resident employees.

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business
A company is deemed to be a Mexican resident for tax purposes if its main administration or the seat of its effective management is located in Mexico. The main administration or seat of effective management is considered to be located in Mexico when the place where the person or persons who take or carry out the decisions concerning the legal entity’s control, direction, operation or management is located within the Mexican territory. Normally this is evidenced by board meeting minutes where it is specified where the board meeting took place.

Non-tax resident business
Non-tax resident companies are subject to income tax at 30% on net income if they have a permanent establishment in Mexico. In general, a permanent establishment is a place of business where the activities of an enterprise are totally or partially carried on. This includes, among others, offices, branches and mining sites.

If a non-tax resident company does not have a permanent establishment in Mexico, income from Mexican sources is taxed, although the rate varies. Generally, the rate is 25%, applied on a gross basis and is usually withheld by the payer if the payer is either a Mexican tax resident or a foreign resident with a permanent establishment in Mexico.

Any payments to related parties who are residents of a tax haven or a jurisdiction with a preferential system of taxation are subject to withholding income tax at 40% except if an exchange of information treaty is in force.

In general, one party is considered to be related to another whenever the former participates in the capital, administration or control of the latter. Similarly, two parties are considered to be related to each other whenever they are controlled, owned or administered totally or partially by the same person or group of persons.

Double tax treaties can reduce or eliminate the taxation.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Income tax
Income tax is levied at 30% on a company’s net income (gross income less deductions, workers’ profit sharing and net operating losses).

Losses can be carried forward up to ten years. No carry back is allowed. Assets can be depreciated using the straight-line method by applying the corresponding depreciation rate, although accelerated depreciation is available for new assets, provided that certain requirements are met.

Value added tax (VAT)
VAT is levied in Mexico on:
- Sales of goods.
- Provisions of services.
- Provision of the temporary use of goods.
- Importation of goods or services into Mexico.

VAT is paid at the rate of 16% (11% in the border zone). A 0% rate can apply, as well as certain exemptions, in some cases.

Mexico uses a credit system so that VAT charged by others may be used to offset VAT owing.

Special levies on the mining industry
As of 2014, a new levy was introduced for holders of mining concessions, equal to 7.5% of net income from mining activity (although certain deductions are allowed, many items that are deductible for income tax purposes are not for the purposes of this levy, for example, investments).

In addition, a 0.5% levy was also introduced on the gross sales of gold, silver and platinum.

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Local taxes
Payroll. In most states, this tax is levied on the total amount of salary payments (see Question 17, Employers).
Real estate tax. This tax is applied on the value of the real estate.
Transfer tax. This tax is imposed on acquiring real estate.

**Dividends, Interest and IP royalties**

20. How are the following taxed:
- Dividends paid to foreign corporate shareholders?
- Dividends received from foreign companies?
- Interest paid to foreign corporate shareholders?
- Intellectual property (IP) royalties paid to foreign corporate shareholders?

**Dividends paid**
An additional 10% tax is levied on dividend distributions to individuals and foreign residents, although tax treaties may reduce or eliminate this tax.

**Dividends received**
Dividends received from a foreign company by a Mexican tax resident must be included in the recipient’s gross income and the relevant tax paid, the taxpayer can then credit income tax paid abroad on those dividends.

**Interest paid**
This is subject to withholding tax at various rates, depending on various factors, with the maximum rate being 35%. Double tax treaties can reduce taxation or even eliminate it. Interest paid to shareholders, either Mexican or foreign resident, may be deemed a profit distribution if certain requirements are not met.

**IP royalties paid**
These are subject to withholding tax at various rates, depending on various factors, with the maximum rate being 35%. Double tax treaties can reduce or eliminate the taxation.

**Groups, affiliates and related parties**

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Thin capitalisation rules apply to any debt incurred with a foreign-related party. The parties must not exceed the 3:1 debt-to-net equity ratio, otherwise interest associated to the excess is not deductible.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Mexico has controlled foreign company (CFC) rules for investments in jurisdictions where either:
- No tax is imposed.
- Tax is levied, but is less than 75% of the income tax that the investments would trigger in Mexico.

Under the CFC rules, income derived from these investments must be taxed in Mexico when accrued in the foreign jurisdiction even if it has not been distributed to the investor.

Investments falling under the CFC rules must also meet special reporting obligations.

Certain exceptions apply for indirect participations in investments, which do not allow the participant to control the investment.

23. Are there any transfer pricing rules?

Mexican transfer pricing rules are based on the arm’s-length standard. These rules have adopted most of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2001.

In addition, safe harbour rules apply to maquiladoras (Mexican assembly plants which mainly manufacture finished goods for export to other countries) and it is possible to obtain an advance pricing agreement with the Mexican authorities.

**Customs duties**

24. How are imports and exports taxed?

**Imports**
VAT must be paid at 16% of the value of the product. The VAT rate for the importation of products in the border zone is 11% (see Question 19, Value added tax). Moreover, there are certain items that are VAT exempted when imported such as, among others, those that under the customs law are:
- Temporary.
- Regarded as returning temporarily exported goods.
- In transit or trans-shipment.

In order to calculate the VAT on imports of tangible goods, the value used for general import tax purposes is considered, adding to the value the amount of the latter tax and other taxes payable. When intangible goods are imported, each case must be analysed to determine the applicable taxable base.

**Exports**
Exports are subject to a 0% VAT rate.

**Double tax treaties**

25. Is there a wide network of double tax treaties?

There are currently more than 40 tax treaties in force, including with the US, Canada, Japan, Spain, Germany and the UK.

In addition, Mexico is currently negotiating several tax treaties with other countries.

**COMPETITION**

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Restrictive agreements and single-firm conduct are regulated by Article 10 of the Federal Economic Competition Law as relative monopolistic practices.

**Competition authority**

The competition authority is the Federal Competition Commission (Comisión Federal de Competencia México) (www.cfc.gob.mx). Official guidelines regarding compliance with the Federal...
Economic Competition Law are (until 7 January 2013) limited to the following matters:

- Compliance guidelines in competition matters for associations, trade associations and professional groups.
- Guidelines for the leniency program and reduction of penalties.
- References for carrying out surveys.
- Document about the definition of relevant markets.
- Document about the determination of substantial market power.
- Guideline for pre-merger notifications.
- Technical criteria for the imposition of fines by competition matters.
- Guidelines for protection and promotion measures in antitrust matters regarding public biddings to be awarded to independent energy producers.
- References for the analysis of vertical restraints.

Restrictive agreements and practices
The Federal Economic Competition Law 1993, amended in 2011 regulates:

- Absolute monopolistic practices (Article 9). These are illegal. They are horizontal restraints and are defined as:
  - price fixing (Article 9, section 1);
  - limits on the supply or demand of goods and/or services (Article 9, section 1);
  - territory and client allocation among competitors (Article 9, section 1); or
  - bid rigging (Article 9, section 4).

- Relative monopolistic practices (Article 10). These are illegal if:
  - the person carrying out the practice has dominant power in the relevant market (Article 11, section 1);
  - the purpose or effect of the restraint is to unduly displace other firms, create exclusive advantages or prevent them from having access to the market (Article 10); and
  - there is no market efficiency (Article 10).
Relative monopolistic practices are mainly vertical restraints, such as:

- exclusive distribution and commercialisation of products or services (Article 10, section 1, 4 and 8);
- territorial and client allocation among non-competitors (Article 10, section 1);
- resale price maintenance (vertical price fixing) (Article 10, section 1);
- tying (Article 10, section 11);
- refusal to deal (Article 10, section 11);
- boycotts (Article 10, section 6); predatory pricing (Article 10, section 7); cross-subsidies (Article 10, section 11); or
- price discrimination (Article 10, section 1).

- Concentrations (mergers and acquisitions) (Article 14). For the requirements in relation to concentrations, see Question 27.

Unilateral conduct
Unilateral conduct that may consist in relative monopolistic practices includes (Article 10, Federal Economic Competition Law 1993):

- Fixing, imposing or establishing the exclusive marketing or distribution of goods or services on the basis of subject matter, geographic area, or fixed time periods among economic agents who are not themselves competitors.
- Imposition of price by a distributor or supplier.
- Tied sales or sale upon the basis of reciprocity.
- A sale, purchase, or transaction subject to the obligation not to use, acquire, sell, market or provide the goods or services produced, processed, distributed or marketed by a third party.
- Refusal to sell or provide goods or services available and usually offered to third parties.
- Predatory prices.
- Discounts or incentives subject to exclusivity.
- Cross subsidising.
- Different prices or conditions of sale for different purchasers in equal circumstances.

27. Are mergers and acquisitions subject to merger control?

The Foreign Investments Commission must approve (or reject) the acquisition of more than 49% of a company’s capital when the assets of that company exceed an amount set annually by the Commission, currently about MXN2.76 billion.

Concentrations must be notified when the transaction fulfills one or more of the following thresholds, if:

- Has a value in Mexico exceeding US$86,140,800.
- Involves the accumulation of 35% or more of the assets or shares of an economic agent (that is, an individual, company, trust or any other agent involved in commercial activities) whose annual assets or sales in Mexico exceed US$86,140,800.
- Involves the accumulation in Mexico of assets or shares with a value exceeding US$40,199,040 and the annual sales or assets of two or more of the economic agents taking part in the concentration, jointly or individually, exceed US$229,708,800.

Rules regarding concentrations apply to all transactions in which any of the thresholds is met, regardless of whether the parties are Mexican or foreign entities.

If a transaction should have been notified and the economic agents fail to do so, the Commission may begin an investigation procedure (either ex officio or at a third party’s request) which could conclude with one or more of the following sanctions:

- Correction or cancellation of the transaction.
- The total or partial reversal of the concentration.
- A fine equivalent to up to 8% of the economic agent’s income in Mexico in the previous year.

There are no criminal penalties regarding mergers and acquisitions (penalties only apply in absolute monopolistic practices) (see Question 28).
INTELLECTUAL PROPERTY

28. Outline the main IP rights in your jurisdiction.

Patents

Definition and legal requirements. An invention is patentable if it (Article 16, Industrial Property Law (IPL)):
- Is new.
- Involves an inventive step.
- Has industrial application.

Patentable subject matter includes inventions in the fields of physics, electricity, biotechnology, consumer goods, chemistry, metallurgy and mechanics.

The patent holder can prevent others from using, commercialising or importing a patented invention.

Registration. To protect an invention, an application must be filed with the Mexican Institute of Intellectual Property (MIIP) (Instituto Mexicano de la Propiedad Industrial) (www.impi.gob.mx).

Enforcement and remedies. The patent owner can file with the MIIP:
- An application of preliminary measures, including seizure of infringing goods.
- An administrative infringement action. The MIIP can impose a fine of up to US$100,000.

Length of protection. Protection is for a maximum of 20 years from the filing date, provided that the annual fees are paid.

Trade marks

Definition and legal requirements. Signs that are visible, distinctive and that are not capable of deceiving consumers can be registered as trade or service marks.

The trade marks that can be protected, according to the IPL are:
- Word marks.
- Design marks.
- Word-and-design marks.
- Three-dimensional marks.
- A combination of these.

Sounds, scents, textures and animated or dynamic signs, for example, cannot be registered as trade marks.

A registered trade mark holder has the exclusive right to use the mark. Use of an unregistered trade mark may create certain rights. The owner of a trade mark registration can file an application requesting the MIIP to declare the trade mark famous or well-known. Well-known trade marks are those known by a certain sector of the public or commercial groups of the country, while a famous trade mark is one known by the majority of the consumer public.

Protection. A trade mark must be registered with the MIIP to be protected.

Enforcement and remedies. The right holder can file with the MIIP:
- Administrative cancellation and annulment actions.
- Non-use cancellation actions.
- Infringement actions. For infringement actions, the trade mark holder can request both:
  - certain preliminary measures, including seizure of infringing goods;
  - damages, but only after the administrative proceeding is concluded and the MIIP’s decision is confirmed.

Length of protection and renewability. A trade mark registration is in force for ten years from its filing date. This term is renewable indefinitely provided the use of the trade mark by the owner or licensee of record is not interrupted for more than three consecutive years.

Registered designs

Definition. A design can be registered if it (Article 31, IPL):
- Is new.
- May be applied in industry.

Registered designs are divided into industrial models and industrial drawings.

The holder of the registered design has the exclusive right to use the design and prevent others from using or reproducing it.

Registration. To protect a design, a registration must be obtained with the MIIP (IPL).

Enforcement and remedies. Design rights are enforced in the same way as patents (see above, Patents).

Length of protection and renewability. Protection is for a maximum of 15 years from the filing date.

Unregistered designs

Unregistered designs are protected as either:
- Three-dimensional trade marks, provided they are distinctive and not merely functional (see above, Trade mark).
- Copyright (see below, Copyright).

Copyright

Definition and legal requirements. Copyright is the right of an author to protection for:
- Literary works.
- Musical works.
- Audiovisual works.
- Dramatic works.
- Cinematographic works.
- Computer programs.
- Photography.
- Other intellectual works.

In addition, a special type of protection, called Reservation of Rights, can be given to titles of publications and characters appearing in works. The copyright holder can prevent others from reproducing the work without consent or a licence.

The Federal Copyright Law recognises both the moral and economic rights of authors.

Works for hire are also regulated by the Federal Copyright Law. The entity or person that hires an author to perform a work may be entitled to the economic rights in the work and therefore, the right to exploit the work.

Protection. Copyright need not be registered to be protected; protection arises on creation of the works and its fixation on a tangible medium. Registration has only a declaratory effect and it can be obtained by filing an application with the Copyright Office (Instituto Nacional del Derecho de Autor) (INDAUTOR).

Enforcement and remedies. There are two types of infringements:
- A pure copyright infringement, which is pursued with the Copyright Office.
- A commercial infringement, which is pursued with the MIIP.

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It is also possible to pursue criminal actions against certain types of copyright infringements. The copyright owner can request an injunction and claim damages.

Length of protection and renewability. Protection of the work is for the life of the author plus 100 years after his death. This term is not renewable. Protection of titles of publications and of characters is from one to five years, renewable, provided they are in use.

**MARKETING AGREEMENTS**

29. Are marketing agreements regulated?

**Agency**

Although the Federal Surety Institutions Law (Ley Federal de Instituciones de Fianza), the General Law of Insurance Institutions and Mutual Societies (Ley General de Instituciones y Sociedades Mutuasistas de Seguros) and the Customs Law (Ley Aduanera) refer to and regulate bond and insurance agents, as well as customhouse brokers, agency agreements are not expressly regulated in the Commercial Code.

Article 75 section X of the Commercial Code refers to commercial agency firms as an act of trade. However, it does not regulate agency agreements, since under Mexican law, it is considered as a commission agency agreement (that is, an agreement under which the agent is obliged to perform certain acts of trade on behalf of the principal).

**Distribution**

Distribution agreements are not specifically regulated in Mexico. They are considered to be an unregulated agreement which is regulated by the general principles of contracts.

**Franchising**

The IPL regulates franchises in Mexico. Franchise agreements must be in writing and must contain information such as the:

- Franchise geographic zone.
- Type of franchise.
- Location.
- Method to be used to determine the profit margin and/or franchising commission.

The franchise agreement must be recorded at the MIIP to give notice of the franchise to third parties.

Franchise disclosure documents are not regulated. However, whoever grants a franchise must provide the prospective franchisee with information regarding the state of the business at least 30 days before the execution of the franchise agreement (IPL).

**E-COMMERCE**

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

Mexico adopted the UNICTRAL Model Law on Electronic Commerce, which along with the amendments of 29 May 2000 to the Commercial Code establish, among other things, the following principles:

- **Data message.** The law defines it as the information generated, sent, received or filed by electronic or optic means, or any other technology.
- **Written evidence.** Regarding data messages, when the law requires the information in written form, this requirement is met as long as the information contained in the data messages remains whole and accessible for further consultation, regardless of its format.

- **Electronic signatures.** They are defined as the information included in data messages by which the signee is identified as the issuer of the data message and that he approves the data message. A signature must be appropriate for the purpose of the data message. The electronic signature has the same legal effect as a handwritten signature, having the same weight as evidence in trial.

- **Providers of certification services.** The individual or public entity rendering services related to electronic signatures and in charge of issuing the certification of the data messages.

**ADVERTISING**

31. Outline the regulation of advertising in your jurisdiction.

Advertising is regulated, among other provisions, in the Federal Consumer Protection Law (FCPL) and the General Health Law and its Regulations.

**FCPL**

The information and advertising of goods, products and services released through any mean or manner must be truthful, verifiable and exempt of text, dialogues, sounds, images, trade marks, designations of origin and other descriptions that lead or may lead to mistake or confusion by being deceptive or unfair (misleading information or advertising). Misleading information or advertising is that which makes reference to characteristics or information related to any product or service that, either truthfully or not, misleads or causes confusion due to the imprecise, false, exaggerated, biased, contrived or tendentious manner in which it is presented (FCPL).

On 24 July 2012, the Ruling setting forth the Guidelines to Analyse and Verify Consumer Information and Advertising Material was published in the Federal Official Gazette, which is effective since 23 August 2012. The purpose of the Ruling is to establish the criteria and guidelines to be followed by the Federal Consumer Protection Agency (Proco) to analyse and verify information and advertising material, in order to protect consumers from deceitful or abusive practices.

**General Health Law and its regulations**

This Law establishes the requirements that must be fulfilled in the advertising of healthcare products and services regulated by the provisions to obtain authorisations and permits from the Federal Commission for the Protection Against Health Risks (Cofepris), including food supplements, alcoholic beverages, tobacco, drugs, herbal remedies, medical equipment, beauty care and biotechnology products and toxic or dangerous substances.

Other provisions that regulate advertising include:

- Federal Media Law (Ley Federal de Radio y Televisión).
- Federal Airport Law (Ley Federal de Aeropuertos).
- Mexico City Outdoor Advertising Law (Ley de Publicidad Exterior del Distrito Federal).
- Mexico City Public Entertainment Law (Ley de Espectáculos Públicos del Distrito Federal).

**DATA PROTECTION**

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

The main data protection laws are:


This regulates the processing of information (including personal
data) held by the government. It establishes the protection of personal data as a limit to the right of access.

- **Federal Law on the Protection of Personal Data held by Private Parties.** This applies to all private individuals and entities that obtain, use, disclose and store personal data (defined as any information concerning an identified or identifiable individual).

There is an exception for credit bureaus and persons engaged in gathering and storing personal data for personal use only, without disclosing or using it for commercial purposes.

A data subject has the right to access, rectify, cancel or object to the processing of their personal data.

The authority in charge of the application of the Law is the Federal Institute for Access to Public Information and Data Protection (Instituto Federal de Acceso a la Información y Protección de Datos) (IFAI).

Any unlawful processing of personal data gives rise to civil penalties and possible criminal offenses. Penalties may be doubled when involving sensitive personal data.

**PRODUCT LIABILITY**

**33. How is product liability and product safety regulated?**

Liability arising out of an illicit action is regulated by a variety of laws, such as the Civil Codes of the different states and the Federal Consumer Protection Law. In this sense, the concept of product liability did not exist in Mexico until the amendments of 4 May 2004 to the Federal Consumer Protection Law. The concept is still vague and imprecise.

**Federal Consumer Protection Law**

Products or services considered as a potential danger for consumers or harmful for the environment, or when its dangerous nature is foreseeable, must include instructions to warn of hazards or warnings of dangerous characteristics by clearly explaining the recommended use or application, as well as the potential effects of its use or application outside the recommended guidelines, taking into consideration that the supplier is accountable for damages caused to consumers.

The consumer can request the substitution of the good or service, to rescind the contract or a reduction or compensation when the product or the service subject-matter of the contract has any fault or hidden defect that renders it improper for its customary use, diminishes its quality or the possibility to be used, or does not offer the safety that, due to its nature, is expected from its reasonable use.

The claim can be submitted indistinctly against the seller, manufacturer or importer, at the choice of the consumer.

On 10 June 2009, the Federal Consumer Protection Law was amended to authorise the Federal Consumer Protection Agency to:

- Inform consumers of the possible risk to their health and safety.
- Order the recall of defective products.

**Civil codes**

Civil actions arising from defective products are based on the general principles of law set out in Federal and state civil codes, which establish that when someone causes loss or damage to another is obliged to respond by paying damages, unless it is proven that the damage was a product of the inexcusable fault or negligence of the victim.

To be liable for payment of damages, the loss or damage (including lost profits) must be a direct and immediate consequence of the illicit action or the breach of an obligation, taking into consideration that liability for loss or damage suffered by someone as a result of the use of a product or service depends on the following:

- An existing obligation (whether assumed by contract or imposed by law).
- A breach of the obligation or acting in an illicit manner.
- Causation between the illegal act (the defective product) and the injury or damage suffered by the victim.
- Damages suffered must be a direct and immediate consequence of the illegal act and not produced as an outcome of the inexcusable fault or negligence of the victim.
- Detriment to the victim's property suffered as a result of the action in question.
- Deprivation of earnings that would have been obtained by fulfillment of the obligation or if the illicit conduct had not taken place.

Regarding the above, the injured party can claim from the offender to either:

- Do what is necessary to revert to the original condition (restore things as they were before the harmful result occurred) whenever possible.
- Pay damages to the victim.

**Class actions**

On 29 July 2010, the Federal Constitution was amended to empower the Federal Congress to enact laws governing class actions. On August 30, 2011, the Federal Code of Civil Procedure, among other provisions, was amended to establish the areas in which class actions are applicable, the rules of procedure, and the basis for calculating damages for the class members. Class actions may be filed by:

- The common representative of a class consisting of at least 30 members (a Senate bill is in process to reduce this to ten members).
- Non-profit civil associations legally incorporated at least one year before the filing date, whose corporate object must include the support or defence of rights and interests of the stakeholders of the matter at issue.
- The Attorney General.

The Federal courts have exclusive jurisdiction to process class actions, which their applicable areas are the sale of goods and provisions of services, either public or private, environmental damage and tortious liability.

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MAIN BUSINESS ORGANISATIONS

**Ministry of Economy (Secretaría de Economía) (SE)**
[www.economia.gob.mx](http://www.economia.gob.mx)

**Main activities.** The SE also promotes public policies and programmes designed to create more and better jobs, more and better entrepreneurs.

**Mexican Stock Exchange (Bolsa Mexicana de Valores) (BMV)**

**Main activities.** The BMV offers a full range of trading and market development services supported by our human capital and world class technology while always seeking to increase shareholder value.

**National Securities Commission (Comisión Nacional Bancaria y de Valores) (CNBV)**
[www.cnbv.gob.mx/Paginas/Default.aspx](http://www.cnbv.gob.mx/Paginas/Default.aspx)

**Main activities.** To safeguard the stability of the Mexican financial system and foster its efficiency and inclusive development for the benefit of society.

ONLINE RESOURCES

**Ministry of the Economy (Secretaría de Economía) (SE)**
[www.economia.gob.mx](http://www.economia.gob.mx)

**Description.** Official, up-to-date.

**Secretary of Labour (Secretaría de Trabajo y Previsión Social)**
[www.stps.gob.mx/bp/index.html](http://www.stps.gob.mx/bp/index.html)

**Description.** Official, up-to-date.

**Junta Federal de Conciliación y Arbitraje**
[www.stps.gob.mx/bp/secciones/junta_federal/index.html](http://www.stps.gob.mx/bp/secciones/junta_federal/index.html)

**Description.** Official, up-to-date.

**Finance Ministry (Secretaría de Hacienda y Crédito Público)**
[www.shcp.gob.mx/Paginas/default.aspx](http://www.shcp.gob.mx/Paginas/default.aspx)

**Description.** Official, up-to-date.

PRACTICAL LAW CONTRIBUTOR DETAILS

**Daniel Del Rio**
Basham, Ringe y Correa
T +52 55 5261 0432
E delrio@basham.com.mx
W www.basham.com.mx

**Jorge De Presno**
Basham, Ringe y Correa
T +52 55 5261 0442
E jorgedepreso@basham.com.mx
W www.basham.com.mx

**Areas of practice.** Corporate; M&A

**Areas of practice.** Labour and employment.
Alejandro Barrera
Basham, Ringe y Correa
T  +52 55 5261 0458
E  barrera@basham.com.mx
W  www.basham.com.mx

Areas of practice. Tax.

Gerardo Hernandez
Basham, Ringe y Correa
T  +52 55 5261 0427
E  qhernandez@basham.com.mx
W  www.basham.com.mx

Areas of practice. Foreign trade.

Amilcar Peredo
Basham, Ringe y Correa
T  +52 55 5261 0499
E  aperedo@basham.com.mx
W  www.basham.com.mx

Areas of practice. Competition and anti-trust.

Adolfo Athie
Basham, Ringe y Correa
T  +52 55 5261 0564
E  aathie@basham.com.mx
W  www.basham.com.mx

Areas of practice. Intellectual property.