
Foreigners' First Steps into Mexico

by Daniel I. Puente.

Mexico is well-considered a business haven for foreign investors, as it provides access to attractive import-export programs, qualified personnel, manufacturing and financial solutions, among others which allows for a prosperous business. It is understandable that a common lay-person would have difficulties understanding their home country's legal system, much more a foreign legal system. Therefore a foreign business entrepreneur would need to get briefly acquainted with Mexico, its Foreign Investment Laws and practices before starting a business in the country.

Since the late 1970s, Mexico has been constantly reinventing itself as it is continuously working to attract investors, leaving well behind those days in which a closed & protectionist economy reigned over a country, who longed to succeed. Nowadays, Mexican and foreigners alike may freely engage and invest in mostly any type of business venture that may come to mind.

The Mexican Foreign Investment Law (hereinafter "MIFL") is the pertinent law for a foreigner to first focus on, as its purpose is to regulate business activities for both foreigners and nationals alike in Mexican soil. The MIFL defines and characterizes three types of foreign investors: the foreign natural person, the foreign legal entity, and the foreign legal entity that is not recognized as a juridical person.

Foreigners and nationals, alike, should initiate their business investing brainstorms knowing that Mexico allows for mostly any permitted business activity so long as the relative person(s) abide by the rule of law. As the MIFL regulates foreign business activities it so adequately enunciates exceptions to the permitted realm of business activities in Mexico. The MIFL categorizes business activities by either: permissible, non-permissible, reserved and conditional.

First-off, the permissible activities are any and all licit activities which are not prohibited by law.

The non-permissible category represents the prohibited activities for Mexican nationals and foreigners, meaning that they may be only conducted by the Mexican Government. Mexico, like most countries, purposely reserves several activities for its exclusive domain to adequately govern the country and maintain an orderly society in hopes of preventing chaos. Among the activities reserved for the State we can find basic services and national treasures' such as: petroleum and petrochemicals, electricity, nuclear energy generation, radioactive minerals, mail, currency generation and others. While foreign investors and Mexican nationals are forbidden to conduct non-permissible activities, it is common to see them contracting with such government entities as suppliers or providers within such non-permitted activities.

The reserved category is a designed class intended only for Mexican nationals, meaning no foreigners are allowed to invest in any of such undertakings. Nevertheless, the law allows for two exemptions. Foreigners could conduct any of the reserved activities if they submit to practice the *Calvo Doctrine* of Mexican Foreign Policy. The *Calvo Doctrine* states that the jurisdiction over international investment disputes lies where the investment is made. As Mexico supports a well regulated foreign investment practice it allows for foreigners to participate under a *Calvo Clause*, through which in essence foreigners agree to be treated equally as Mexican nationals and waive to the protection of their home country courts, submitting themselves to domestic courts. The second exemption applies for those foreigners who do not wish to submit themselves to the *Calvo Clause* and who have a limited investment plan, which may invest in the reserved activities through neutral investment schemes. Neutral investments schemes allow for a foreigner to invest on a limited manner and only in authorized investment schemes such as: authorized trusts and the acquisition of limited participation stock, which are commonly capped and do not grant the foreigner the control over the relevant entity. Among some of the reserved activities for Mexican nationals we find: land passenger transportation, tourism transportation, credit unions, development banking, and some others.

The conditional category limits foreign investment to participating within approved percentage caps applying to the business activities regulated in such section of the MIFL. Among the conditional activities are domestic air transportation, specialized air transportation, insurance institutions, retirement fund administration institutions, manufacture and sale of guns and munitions, port administration, along with other activities. Nevertheless, there are certain activities which allow for a participation increase, if applied and authorized, by the Foreign Investment Commission.

Having briefly gotten acquainted with the MIFL and Mexican practices, a foreign investor will be better positioned to determine the feasibility of its potential investment in the Mexican business market, and as such will have taken the first steps towards transacting in Mexico.

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