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## Chapter 2

# Foreign Investment

## Introduction



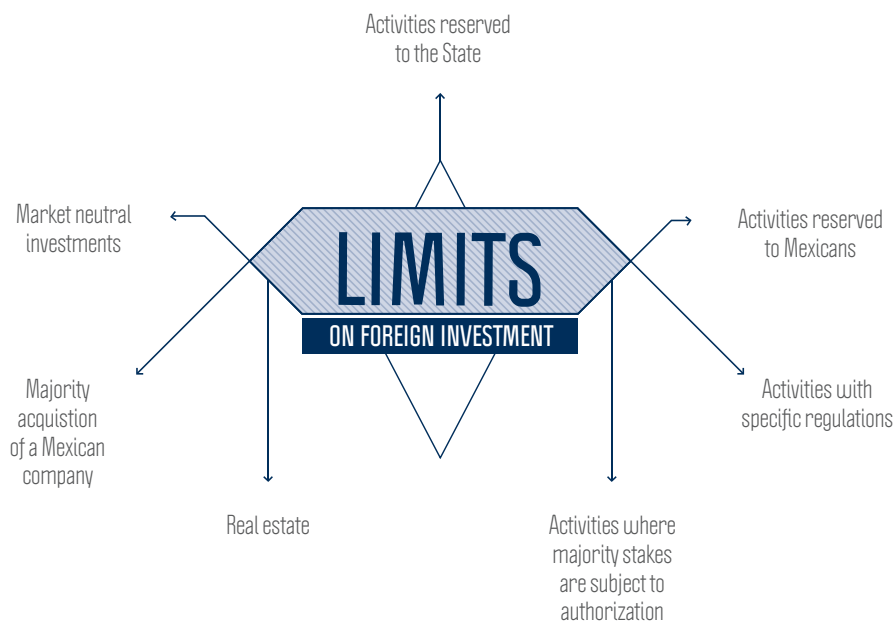
In recent decades, Mexico has established itself as a destination for foreign investment through the implementation of economic liberalization plans set out in the early nineties. Significant trade and investment barriers have been eliminated through the implementation of more flexible laws aimed at attracting foreign capital by allowing foreign access to various economic activities that were previously reserved for Mexicans.

Moreover, Mexico has concluded several trade agreements such as NAFTA and a treaty with the European Union, allowing Mexico to expand its market for goods and services. The governmental authority responsible for implementing and monitoring regulations on foreign investment is the National Commission for Foreign Investment (CNIE), which is a branch of the Ministry of Economy. The CNIE keeps statistical information on foreign investment through the National Registry for Foreign Investment (RNIE).

Foreign investment in Mexico is subject to certain limitations depending on the type of activity. The most politically sensitive economic activities are reserved to the State (oil, electricity, nuclear energy, postal services, production of banknotes and coinage, and airport control, among others). Certain activities are reserved for Mexicans, while other activities allow foreign investment up to a certain percentage.

## KEY POINTS

- Foreign investment is the participation by foreign investors in the capital stock of Mexican companies, regardless of the percentage.
- The Constitution requires foreigners who intend to engage in business in Mexico to be considered as Mexican nationals, and therefore waive their right to seek protection from their government.
- There are several ways to invest in Mexico, with the most common being the formation of a Mexican corporation (see Chapter 4), although it is also common to make investments through joint ventures, distribution agreements, franchises, or directly by opening a branch of the company.



## QUESTIONS AND ANSWERS

### **1- What are the percentage limitations on foreign investment in Mexico?**

Some of the activities in which foreigners can hold up to a 49% stake are: insurance, bonds, currency exchanges, leasing, factoring, investment advising, manufacturing and marketing of firearms and ammunition, newspaper publishing, port management, fuel supply for ships, aircraft and railway equipment, and telecommunications.

Other activities in which foreigners can have more than a 49% stake with the authorization of CNIE are, among others: airports, port services, cellular communications, oil pipeline construction, drilling of oil and natural gas wells, and private education services.

Finally, certain activities are reserved exclusively for Mexicans, such as, land transport of passengers and cargo (with the exception of courier or parcel services), retail sale of gasoline and liquefied petroleum gas, development banks, and certain professional services.

### **2- Can foreign individuals purchase real estate in Mexico?**

Yes, unless the property is located within the restricted zone (50 kilometers from the coast or 100 kilometers from the border). Foreign individuals can use investment trusts or neutral investment schemes to acquire property within the restricted zone, however, this requires government authorization.

### **3- Does Mexico offer incentives for foreign investment?**

Yes. Several states in Mexico offer incentives for foreign investors who want to establish businesses within the state, such as exemptions from certain local taxes and discounts on official registration. Foreign investment in Mexico is also protected by international agreements which allow investors to participate in trade and investment arbitration.

### **4- What are the obligations of foreign investors in Mexico?**

All investments must be registered with the RNIE. If the activity requires the authorization of the CNIE, the investor is required to complete the necessary applications before making an investment. Once the investment is made the investor must submit annual financial reports, and in some cases may be required to submit quarterly reports.

### **5- What is the consequence for failing to register a foreign investment with the RNIE or present obligatory information related to such an investment in a timely manner?**

The RNIE is empowered to impose fines as a consequence for failing to meet these obligations.

## CASE STUDY

“Company A” is a foreign company engaged in the construction and operation of airports around the world. “Company A” is interested in participating in an international public procurement bid for the construction and operation of a new airport being planned in one of Mexico’s world-renowned tourist destinations.

### **Can “Company A” act as an investor and airport operator?**

Subject to the specific provisions of the bidding rules, “Company A” may freely participate in the project provided that their participation does not exceed 49%. In order for the preceding to take place, “Company A” should establish a Mexican corporation that holds title to the concession for the construction and operation of the airport.

### **Can “Company A” have a stockholding interest of more than 49%?**

Yes. The law permits a greater stockholding interest so long as it is authorized by the CNIE. The process for obtaining authorization is relatively fast, but requires the submission of financial information by the applicant, as well as proof of experience and studies demonstrating that the project will benefit the Mexican economy.

### **Should “Company A” be registered with the RNIE?**

During the bidding process it is not necessary to register “Company A” because the investment has not yet taken place. However, in the case that the company wins the bid the Mexican company that will be established for the purpose of this project must register with the RNIE, detailing the percentage share of foreign investment.