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## Mexico: The Present Status of Legislation and Governmental Policies on Direct Foreign Investments

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# Mexico: The Present Status of Legislation and Governmental Policies on Direct Foreign Investments\*\*

## I. Introduction

The Mexican government has recently stated that Mexico is going through "the most serious economic crisis which the country has faced during its modern history."<sup>1</sup> The effects of the crisis on the legislation and policies of the Mexican government regarding foreign investments is the subject of this article.

Since September 1982, when the Mexican peso was substantially devaluated and a generalized system of control of exchange was established after several years of stability, Mexican attorneys engaged in giving legal advice on international matters have received the following recurrent questions from abroad: Will the Law on Foreign Investments be amended? Will the general rule of 51/49 percent ownership interest be changed to permit a majority foreign capital interest in Mexican joint venture companies? These questions have generally arisen because of the evident lack of internal capital for payment of the foreign debt and also maintenance of an acceptable rate of national economic development. For the first time in many years, the 1982 gross national product declined, the balance of payments deficit reached alarming proportions and the foreign debt rose to over 80 billion dollars.

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\*\*Adapted from a speech delivered on August 2, 1983 at a Seminar on Mexico organized by the Section of International Law and Practice of the American Bar Association, in Atlanta, Georgia.

<sup>1</sup>National Development Plan, 1983-88; Federal Chief Executive, May, 1983, hereinafter the "National Plan" or simply PND (in Spanish).

In this article I shall try to respond to those questions from the point of view of a practicing attorney with specific experience in this matter. At the outset I can provide the answers on a preliminary basis, and elaborate on them later in some detail. At the risk of oversimplification, it is my opinion that: (a) the Law on Foreign Investments will not be amended; (b) the general rule of 51/49 percent for Mexican joint ventures with foreign capital will not be changed; (c) in certain exceptional cases, a majority foreign capital will be permitted, generally on a temporary basis; and (d) in any event, there continues to prevail in Mexico a favorable climate for foreign investment, with significant advantages over other countries. The following addresses these assertions in greater depth.

## II. Basic Legal and Policy Framework

The Mexican government maintains in force and is guided by a series of well-defined policies and principles, based on the Mexican Constitution<sup>2</sup> and other laws. In economic matters, for example, the government sustains a very clear nationalist policy with antecedents going back more than thirty years, which it continues consistently to apply.<sup>3</sup> On the other hand, the government contemplates the present crisis as a transitory stage that can be overcome, and will make only those changes it considers necessary for resolving this crisis in accordance with its fundamental principles and policies.<sup>4</sup>

### A. AMENDMENTS TO THE CONSTITUTION

To respond to the crisis, the government prepared plans and directives of great significance. First, the Constitution was amended in February 1983,<sup>5</sup> permitting the federal government to adopt measures of great scope in

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<sup>2</sup>Political Constitution of the Mexican United States, proclaimed February 5, 1917. (Hereinafter "The Constitution" or "The Federal Constitution".)

<sup>3</sup>Recently, the Executive Secretary of the National Commission on Foreign Investments summed up the fundamental principles of the National Project of the Constitution as follows: Nationalism, liberty and justice, democracy as a system of life, mixed economy, individual liberties, the social rights of the people and internationalism. Adolfo Hegewisch, Address on Foreign Investments, given at the Free School of Law of Mexico, June 16, 1983 (hereinafter cited as "Hegewisch Address").

<sup>4</sup>"Whoever (especially abroad) prophesied for Mexico complete economic and social collapse, disorganizational and general disorder, and inability to hold to its direction, is totally mistaken. Eight months after those predictions, the country is being modernized and is advancing, the crisis is being overcome, and we shall come out of it strengthened and renewed in all aspects." Declarations of Mr. Manuel Bartlett-Diaz, Secretary of the Interior, Excelsior, July 28, 1983.

<sup>5</sup>Amendments to Articles 16, 24, 26, 27-XIX and -XX, 28, 73, 29 D, E and F of the Constitution of the Mexican United States, approved Feb. 2, 1983, and published in the Federal Official Gazette (D.O. Feb. 3, 1983).

economic matters, and reorienting the principles governing the actions of the state and private individuals. Later, in May 1983, the National Development Plan 1983-88 (PND) was adopted. The PND constitutes the basic instrument of developmental policies of the present Mexican government and provides for their implementation.

The constitutional amendments that were approved create a broad system of powers in the Congress and especially in the Federal Chief Executive, and permit the federal government to plan and carry out all the strategy of development of the country in accordance with the National Plan for Development.<sup>6</sup> The amended Constitution lists the "strategic" areas reserved exclusively to the state mentioned in the Constitution and in other laws<sup>7</sup> and adds new ones, including public service of banks and credit. This is consistent with the expropriation of the assets of the private banks decreed in September 1982.<sup>8</sup>

At the same time, however, the Constitution provides for a mixed economy. Article 25 (as amended) reads:

The law shall encourage and protect the economic activity of private parties and shall furnish the conditions so that the development of the private sector will contribute to national economic development.<sup>9</sup>

## B. NATIONAL DEVELOPMENT PLAN

In May 1983, President de la Madrid issued the National Development Plan 1983-1988 on the basis of the Law of Planning approved by Congress in January of the same year. This plan, invaluable to Mexican public officials, is also an indispensable reference document for the private sector. The plan was prepared under the inspiration and probably the direct supervision of President de la Madrid.<sup>10</sup> It is a 430-page document containing in very detailed form the political and economic policies that govern the Mexican State, the diagnosis of the national problems, the purposes and strategies of solutions in a national and international context, and the bases for implementation of those strategies.<sup>11</sup> The chapters on development financing analyze the participation of private capital, with an emphasis on industrial

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<sup>6</sup>Constitution, arts. 25 and 25, as amended.

<sup>7</sup>See *infra*, at notes 27 and 28.

<sup>8</sup>See Decrees expropriating assets of privately held banks, (D.O., Sept. 1 and 6, 1982).

<sup>9</sup>Constitution, art. 25, last para., as amended.

<sup>10</sup>As the Secretary of Programming and Budget in the previous (Lopez Portillo) Administration, de la Madrid was the author of the Global Plan of Development of 1980. Later, as a candidate for the presidency of the Republic, he prepared the "Basic Plan of Government 1982-1988", which was approved by the Institutional Revolutionary Party and served as the basis for the PND.

<sup>11</sup>In accordance with amended Article 26 of the Constitution, the government has insisted that its economic planning be democratically planned based on popular consultations with interested parties (the people).

development and foreign trade. Finally, regarding the ties of the country with the international economy, the PND states precisely the application of banking policies, foreign commerce, and foreign investment. It is interesting to point out that in the same way that private capital has a specific, assigned role within a national plan of development, direct foreign investment, a manifestation of private capital, also has its specific, assigned role.

### **III. Present Policy on Foreign Investments**

The present policies of the Mexican government on direct foreign investment are guided primarily by a series of policy statements contained in the PND, as well as by the declarations of the Secretary of Commerce and the Executive Secretary of the National Commission on Foreign Investments (CNIE).

#### **A. THE PND AND CNIE DECLARATIONS**

The details of the policy statements of the National Development Plan are beyond the scope of this discussion.<sup>12</sup> With evident support in the guidelines

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<sup>12</sup>The provisions of the National Development Plan may be summarized as follows:

- (a) The existing legislation on foreign investments and technology transfer, on the basis of nationalistic principles, provides an adequate framework of standards (subject, perhaps to some minor adjustments) to orient the technological, administrative and financial contributions of foreign investment in a flexible manner, and in accordance with certain development priorities. Therefore, this legislation will be maintained.
- (b) Foreign investment will be treated as complementary to Mexican investment.
- (c) The policy on foreign investment will move from a defensive role to an active role, and thus will seek and promote foreign investment alternatives consistent with the priorities set forth in the PND.
- (d) Foreign capital will not be permitted to acquire efficient, already-established companies or dominate priority branches of industry.
- (e) Foreign investment acquisitions or majority participation in already-established Mexican companies may be authorized in exceptional cases where there is a significant contribution in technology, trade balance, or increased integration of Mexican content in product manufacturing.
- (f) The following criteria will be adopted and sought in selectively promoting and screening foreign investment:
  - (1) effective substitution of imports in selected branches of the economy;
  - (2) a good and even better balance of payments;
  - (3) international competitiveness of goods and services produced; and
  - (4) actual transfer of modern technology and managerial abilities.
- (g) The administrative process of issuing authorization to foreign investment will be streamlined via decentralization to produce faster and more efficient decisions.
- (h) A more flexible treatment for small and medium-size foreign investors will be established to allow their capital and technological contributions to flow more easily to the agricultural and cattle-growing sectors, and certain branches of consumer and capital goods, with fewer risks of dependency to the recipient.
- (i) The effectiveness of Mexicanization will be promoted or rationally monitored to assure

of the PND, the Executive Secretary of the National Commission on Foreign Investments has recently made various policy statements on direct foreign investment. These may be distilled to the following points: Foreign investments, duly oriented, may be a factor that will contribute to the solution of the crisis affecting the economy of the country. Nevertheless, Mexico is not willing to receive foreign investment in an indiscriminate manner. Therefore, the Law on Foreign Investments (LFI)<sup>13</sup> determines what activities are reserved exclusively to the Mexican State and those in which only Mexican investors may participate. Likewise, the LFI indicates those cases in which foreign investment may not exceed certain percentages of the total capital of the companies, in accordance with specific laws in force or others that may be passed in the future. For example, 34 percent of special mining concessions, 49 percent of ordinary mining concessions, and 40 percent of secondary petrochemical operations and automobile parts manufacturing, are the maximum percentages of foreign investment allowed in those respective areas. For other economic activities, 49 percent is set as a general rule for foreign investment, but the CNIE has the power to increase or decrease that percentage, provided no restriction exists in any specific law.

In accordance with criteria set by the LFI, the CNIE itself determines whether the foreign investment is acceptable for the country, and the requirements that the foreign investment must fulfill. To meet these requirements, the investment should: be complementary to Mexican investments; be selective, that is, oriented to the priority sectors of the developmental plans of the country; generate new sources of employment; make an adequate technological contribution to our country; promote a favorable balance of payments by means of an effective substitution for importations; and assist the decentralization of industry in order to promote zones with relatively lower development. Industrial fields with potential priority include: (1) capital goods; (2) electronics; (3) raw materials for the pharmaceutical industry; and (4) those fields fundamentally oriented to exportation, including processing companies.

The foregoing criteria and the CNIE's general resolutions determine economic policy, with adjustments for national and international contingencies. The government has decided not to amend the Law on Foreign Investments, which it considers a flexible instrument for adjustment to the concrete requirements of the economic conditions of the country.<sup>14</sup>

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actual management control by the Mexican party and to avoid undesirable effects on purchasing, pricing, and technology decisions.

<sup>13</sup>Its complete title is the "Law to Promote Mexican Investment and Regulate Foreign Investment" of Feb. 16, 1973 (D.O. May 9, 1973), in force since May 8, 1973.

<sup>14</sup>Hegewisch Address, *supra* note 3.

## B. DECLARATIONS OF THE SECRETARY OF COMMERCE

The Secretary of Commerce may also make policy statements on direct foreign investments, guided by the National Development Plan. Several of the Secretary's recent declarations may be summarized to the following points:

Foreign investment will have an important place in the future of the country; in special cases, there may be a majority of foreign capital in Mexican companies, provided it assists in national development and is subject to Mexican interests; direct investment by any country should be directed and oriented in accordance with the priorities of the development strategy of Mexico, and should support the efforts of Mexican enterprises to modernize and consolidate the productive system of the country; and on the basis of the criteria of the respective laws, the CNIE decides whether the foreign investment is acceptable for the country, and the formalities and requirements to which it should submit are determined.<sup>15</sup> A more detailed review of the prevailing Mexican legislation with regard to foreign investments is discussed below.

## IV. Mexican Law of Foreign Investments

There are six main sources of Mexican legislation on foreign investments currently in force. These are the Federal Constitution,<sup>16</sup> the Law on Foreign Investments of 1973 (LFI),<sup>17</sup> the Regulations of the National Register of Foreign Investments of 1973,<sup>18</sup> the General Resolutions of the National Commission on Foreign Investments issued between 1975 and 1983,<sup>19</sup> the Law on Transfer of Technology of 1982,<sup>20</sup> and the Regulations of the Law on

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<sup>15</sup>Declarations of Mr. Hector Hernandez Cervantes, Secretary of Commerce and Industrial Development, *Excelsior*, June 16, 1983. The Secretary of Commerce has stated: "The CNIE carries on consultations for analyzing the operations of the foreign investment and studies the possibilities of making the authorizations which refer to expansion of Mexican companies with a majority foreign capital more flexible in some aspects, provided they comply with the criteria, and come within the spirit, of the law."

<sup>16</sup>See *supra* note 5. See also Articles 27 (real estate owned by foreigners, "Calvo" clause), 28 (democratic planning, State supervision, etc.) and others. Recently, paragraph XXIX-F was added to Article 73, empowering the Federal Congress to enact laws regulating foreign investments and the transfer of technology.

<sup>17</sup>See *supra* note 13.

<sup>18</sup>D.O. Dec. 11, 1973; see also D.O. Dec. 28, 1979.

<sup>19</sup>Nineteen resolutions have been issued thus far. See *LEGISLATION ON INDUSTRIAL PROPERTY, TRANSFER OF TECHNOLOGY AND FOREIGN INVESTMENTS* (Porrua, 7th ed., 1982).

<sup>20</sup>Its complete title is "Law on the Control and Recording of the Transfer of Technology and the Use and Exploitation of Patents and Trademarks" of Dec. 29, 1981 (D.O. Jan. 11, 1982), in force since Jan. 10, 1982 (repealing the previous law of 1972).

Transfer of Technology of 1982.<sup>21</sup> Other federal laws exist that contain specific provisions on foreign investment in different fields and that should be taken into account, e.g., the Mining Law,<sup>22</sup> the Law on Inventions and Trademarks<sup>23</sup> and others.

#### A. THE FOREIGN INVESTMENT LAW

The Law on Foreign Investments, which is likely to apply for sometime, governs foreign investment in the ownership and control of Mexican enterprises, the acquisition of assets and the operations (transactions) referred to in the law itself. Under the law, foreign investment is deemed to be that invested by alien entities; alien individuals; alien unincorporated economic units; or Mexican entities in which either foreign capital has a majority equity participation (no definition of "majority" is included, but certainly more than 50 percent) or those in which foreigners in any manner exercise control or management of the entity.

The LFI lists those activities restricted entirely to the Mexican government, or to Mexican individuals or entities in which aliens cannot participate by charter provision. It also sets forth the specific percentage (less than 49 percent) of foreign ownership allowed in various special types of activities, and limits the maximum foreign investment percentage in all other unspecified activities to 49 percent.<sup>24</sup> The LFI further provides that foreign investors may not participate in management bodies of the entity in question in a proportion exceeding their equity participation in the entity.

Government authorization is required for investments acquiring, in one or more simultaneous or successive transactions, more than 25 percent of the equity or more than 49 percent of the fixed assets of an existing Mexican enterprise. For purposes of the LFI, the leasing of assets essential to the carrying on of an enterprise's operations constitutes an acquisition. In addition, authorization is also necessary for any action whereby the management of an entity vests in a foreign investor. Any action taken by the foreign investor without authorization shall be null and void.

Foreign investments existing as of the effective date of the law are subject to registration requirements. Government authorization will be required for wholly or majority foreign-owned Mexican concerns to expand their product lines, engage in new economic activities, or open new establishments.

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<sup>21</sup>The complete title is "Regulations of the Law on the Control and Recording of Technology and the Use and Exploitation of Patents and Trademarks" of Nov. 17, 1982 (D.O. Nov. 25, 1982).

<sup>22</sup>Regulatory Law of Constitutional Article 27 with Regard to Mining of Dec. 11, 1975 (D.O. Dec. 22, 1975).

<sup>23</sup>Of Dec. 30, 1975 (D.O. Feb. 10, 1976).

<sup>24</sup>See *infra*.

**B. AUTHORITIES IN CHARGE OF APPLYING  
THE FOREIGN INVESTMENTS LEGISLATION**

The CNIE is composed of seven cabinet members.<sup>25</sup> Its powers are well defined in the LFI.<sup>26</sup> Undersecretaries in the departments serve as alternates for the secretaries. The CNIE must meet at least once a month. In addition to issuing general resolutions from time to time, the CNIE regularly passes on matters that require its specific authorization, or the granting of which has not been delegated to the Executive Secretary of the CNIE pursuant to its general resolutions.<sup>27</sup> The LFI establishes an Executive Secretary of the CNIE and sets forth his powers.<sup>28</sup> The President of the republic appoints the Executive Secretary.

General resolutions issued by the CNIE grant the Executive Secretary the power to issue resolutions on certain procedural matters.<sup>29</sup> For administrative reasons, the Executive Secretary of the CNIE is also the head of the Direction (Bureau) General of Foreign Investments of the Department of Commerce and Industrial Development. This Bureau receives and studies the various applications of foreign investors, submits them to the Executive Secretary, who in turn submits them to the CNIE as a whole.

While the Executive Secretary of the CNIE is appointed by the President of the republic and reports to him as Director General of Foreign Investments, the Executive Secretary of the CNIE reports to the Secretary of Commerce and Industrial Development. This creates some confusion and, in the opinion of some, may give rise to conflicts of interest. In any case, the CNIE as a whole is the maximum authority on foreign investment matters.

The LFI also grants authority to the departments of the federal government to issue specific authorizations as required by the resolutions of the CNIE or its Executive Secretary. In practice, there is not much intervention on the part of the individual departments, with the exception of the Department of Commerce and Industrial Development and the Foreign Affairs Department. The latter is expressly empowered by the LFI to grant the permits required for the acquisition of real property by foreigners and for the creation or amendment of corporations.<sup>30</sup>

A government agency that has become very important for the foreign investor on industrial matters is the Director General of Industries of the Department of Commerce and Industrial Development. This agency makes

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<sup>25</sup>As of January 1, 1982, the Secretaries of the Departments of the Interior, Foreign Affairs, Public Credit and Finance, Mines and Energetics, Commerce and Industrial Development, Labor, and Programming and Budgeting make up the CNIE.

<sup>26</sup>LFI, art. 12.

<sup>27</sup>See *supra* note 19 and accompanying text.

<sup>28</sup>LFI, arts. 11, 14 and 25.

<sup>29</sup>LFI, arts. 14, II-VIII.

<sup>30</sup>LFI, arts. 15, 16 and 17.

the detailed analyses of industrial projects involving foreign investment, which in due course will require special authorization from the CNIE. The Director General of Industries also analyzes proposed industrial projects for their consistency with the priorities and other guidelines of the PND and with specific development plans for the various branches of industry.

### C. CNIE'S GENERAL RESOLUTIONS

There are no regulations of the LFI proper, except as regards the National Register of Foreign Investments.<sup>31</sup> Nevertheless, based on the LFI, the CNIE has issued nineteen general resolutions between 1975 and 1982 that set forth criteria and requirements for the application of the LFI.

The most important of these resolutions has been Number 8, which defines the concept of new establishments for the existing foreign investor; Number 15, which empowers the Executive Secretary of the CNIE to grant permits for the relocation of establishments in certain cases; and Number 16, which establishes criteria for the definition of new economic activities and new product lines in accordance with a detailed catalogue of products and activities. Resolutions 18 and 19, issued in relation to situations derived from the General Exchange Controls System established in September 1982, have become inoperative as a result of the revocation of that general exchange control system. At its June 1982 session, the CNIE approved ten or twelve general resolutions replacing these nineteen resolutions and providing, under the updated criteria, for greater ease in the resolution of matters submitted to the CNIE itself and its Executive Secretary.

### D. MAXIMUM PERCENTAGES OF EQUITY

The LFI reserves exclusively to the Mexican state the activities of: petroleum, basic petrochemicals, radioactive minerals and nuclear energy; mining in certain cases provided for in the Mining Law; electricity, railways, and telegraphic and radio-telegraphic communications.<sup>32</sup> The Federal Constitution also restricts the following activities entirely to the Mexican State: coining of money; mail service; issuance of bank notes; communications via satellite; and the public service of banking and credit.<sup>33</sup> Certain activities are restricted by charter provision to the exclusive participation of restricted Mexican nationals or their entities. These include: radio and television; motor vehicles transportation, whether urban, inter-urban or on federal highways; (Mexican) air and ocean transportation; forestry; distribution of

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<sup>31</sup>See *supra* note 16 and accompanying text.

<sup>32</sup>LFI, arts. 4 and 6.

<sup>33</sup>See *supra* note 2.

gas; and such other activities which may be expressly set forth in special legislation or regulations issued by the federal executive.

The LFI sets forth the specific percentage of foreign ownership allowed in certain activities. Thus the exploitation of national mining reserves: may have up to 34 percent foreign ownership; ordinary mining concessions up to 49 percent; secondary products of the petrochemical industry up to 40 percent; the manufacturing of auto parts up to 49 percent. Special legislation or regulations issued by the federal executive may also set forth specific foreign to national ownership ratios for other activities. The LFI also sets forth the general rule limiting the maximum foreign investment percentage in all other unspecified activities to 49 percent. This rule applies to any new Mexican enterprise organized after May 8, 1973, the effective date of the LFI and only in the absence of specific laws or regulations on foreign investments specifying a maximum percentage of foreign investment in particular areas.

#### E. EXCEPTIONS TO THE GENERAL 49/51 PERCENT RULE

Article 5 of the LFI provides:

The National Commission of Foreign Investments may decide on the increase or reduction of the percentages referred to in the preceding paragraph when it deems it advisable for the economy of the country, and may set the conditions under which the foreign investment shall be received, in specific cases.<sup>34</sup>

In accordance with Article 13, the Commission considers seventeen criteria in determining the advisability of authorizing foreign investment and in establishing the percentages and conditions to which such investment shall be subject. For the most part, such criteria have been restated with some variations in the National Development Plan,<sup>35</sup> and in the statements of policy on foreign investment made by the Executive Secretary of the CNIE and the Secretary of Commerce.<sup>36</sup> Any possible exception to the 49 percent rule must be based on the criteria set forth in the LFI, as supplemented and updated by the PND and the general resolutions and policies on foreign investment of the CNIE.

On the other hand, Adolfo Hegewisch, Executive Secretary of the CNIE, has indicated that too much emphasis has been placed on the 49/51 percent rule. Rather he believes the emphasis should be on the general behavior of enterprises, taking into account their tax situation, generation of employ-

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<sup>34</sup>See *supra* note 13.

<sup>35</sup>See *supra* note 1.

<sup>36</sup>See *supra* notes 12-15 and accompanying text.

ment, volumes of export contributing to a substitution of imports, local content of products, reinvestment of profits, and the favorable political and social effects to the country.<sup>37</sup> Further, the Secretary of Commerce has stated that a majority foreign equity participation may be allowed in new enterprises or in the expansions of existing ones.<sup>38</sup>

However, great care is exercised by public officials in their policy statements to emphasize that majority foreign equity participation is the exception and not the general rule. Thus, since the LFI became effective in 1973, there have been no more than 100 or 150 Mexican companies authorized with majority foreign equity investment, and that since the beginning of the present Administration (December 1982), no permit has been granted for any new company with a foreign capital investment exceeding 49 percent.<sup>39</sup>

From the foregoing and from the text of the LFI itself, and also from the foreign investment policies of the PND and the statements of public officials, the 49/51 percent rule is in full force and effect, with exceptions possible in very special cases. These would probably involve large scope projects within the priorities set forth in the PND and the specific industrial development plans. Foreign investment exceeding 49 percent may have a strong possibility of authorization in the following three situations: the capitalization of large accounts payable to foreign creditors by way of the issuance of shares of stock of the debtor company;<sup>40</sup> reorganization or expansion of existing operations in priority industrial sectors;<sup>41</sup> and, under certain conditions, direct foreign investment in Mexican corporations with severe economic problems in order to preserve employment and priority activities.<sup>42</sup>

It is expected that in each authorized case, the CNIE will require a commitment to Mexicanization (i.e., a gradual change in ownership to 51 percent or more Mexican) over a period of time, with possible exceptions depending upon the characteristics of the project, as well as other commitments such as exports, balance of payments, and others. From a procedural standpoint, the filing and handling of any application for an authorization of majority foreign participation in a new or existing enterprise requires a formidable effort at the level of the government agencies that must authorize the project, especially the Executive Secretary of the CNIE, the Director General of Industries of the Department of Commerce, and the CNIE itself.

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<sup>37</sup>See *supra* note 3.

<sup>38</sup>See *supra* note 15.

<sup>39</sup>See *supra* note 3.

<sup>40</sup>The CNIE is considering more than twenty such applications.

<sup>41</sup>For example, the recent case of Xerox, which was authorized as a new industrial project.

<sup>42</sup>For example, a recent authorization was made to "Industrias Ericsson."

F. ADVANTAGES OF THE  
GENERAL 49/51 PERCENT RULE

There are various advantages of the general 49/51 percent rule including: immediate organization of the joint venture company, without any requirements other than obtaining a routine permit from the Department of Foreign Affairs, issued in accordance with guidelines already approved by the CNIE; access to immediate expansion in new establishments, new product lines, or new fields of economic activity, without obtaining any permit from the CNIE or its Executive Secretary, since the joint venture company is deemed a Mexican investor; automatic qualification for all of the tax and other incentives available only to enterprises with 51 percent or more Mexican capital; and easier access to the various levels of public administration relating to permits, authorization, etc. Also, minority shareholders in a Mexican corporation, whether Mexican or foreign, are protected by Mexican law against certain decisions of any majority group of shareholders. This protection may be further expanded by way of veto powers, which may be provided in the charter or by-laws of the corporation.<sup>43</sup>

V. Conclusion

It is unlikely that the Foreign Investment Law of Mexico will not be amended for quite some time, since the government considers it a flexible, adequate instrument to guide the decisions of the Foreign Investments Commission and other authorities in charge of its application.

These decisions will also be made in conformity with the principles and strategies designed for the development of Mexico by the National Development Plan; specifically, by the policies on foreign investment set forth in the PND as further interpreted by the CNIE. The 49 percent rule is here to stay as a matter of general principle, although the CNIE may make exceptions to the rule in very special cases. In view of the formidable effort involved in obtaining any such exception, particularly when the matter does not involve a large or priority industrial project, the small or medium-size foreign investor is well advised not to underestimate the benefits of the 49 percent rule. With respect to large projects that qualify as an exception to the general 49 percent rule, depending on the characteristics of the project, it is possible that the CNIE will require a commitment to Mexicanization, or will require other commitments, such as exports, a favorable balance of payments at a given date, substitution of imports, or others, as a condition to authorization of an exception.

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<sup>43</sup>Such veto powers should be reasonable in scope and number; otherwise they may be deemed to confer control, which is not allowed a minority foreign shareholder under the LFI.