Client Alert: Initiative to Amend the Foreign Investment Law

The President of Mexico submitted to the Senate of the Republic an initiative to amend the Foreign Investment Law (*Ley de Inversión Extranjera*, the "**LIE**") that would subject acquisitions by foreign investors in Mexican companies to prior authorization when those transactions could pose a risk or threat to national security. The initiative is a legislative proposal that must still be debated and approved by the Congress of the Union.

Below, we summarize the initiative's most relevant aspects and its practical implications if Congress approves it without substantial modifications.

A. New National Security Authorization Process

An acquisition would require a favorable resolution from the National Foreign Investment Commission (*Comisión Nacional de Inversiones Extranjeras*, the "**CNIE**") when the following conditions are met: (i) as a result of the transaction, the foreign investment seeks to hold, directly or indirectly, more than 49% of the share capital of a Mexican company; (ii) the total value of the company's assets exceeds the threshold set by the CNIE through a general resolution, and (iii) the company operates in one or more of the sectors listed below (see Section B). If the acquisition exceeds 49% but does not exceed the monetary threshold, filing an application would be voluntary.

This new procedure would be independent from the authorizations currently provided for under Articles 8 and 9 of the LIE, whose potential application must be analyzed separately.

The application would be filed jointly by the Mexican company that is the subject of the transaction and the foreign investor with the CNIE's Technical Secretariat. The Commission could determine that the transaction is viable, authorize it subject to modifications or mitigation measures (including periodic reporting and verification mechanisms), or prohibit it on national security grounds.

The initiative would also modify the composition of the CNIE. The heads of the Ministries of National Defense, the Navy, and Security and Civilian Protection would be added as new members. In addition, in sessions addressing national security matters, the heads of the Office of the Attorney General of the Republic, the National Intelligence Center, the Tax Administration Service, and the Financial Intelligence Unit would participate as permanent guests, with voice but without a vote.

B. Sectors and Activities Subject to Scrutiny

The mechanism would apply when the Mexican company operates in one or more of the following economic sectors:

- **Strategic infrastructure**, physical or virtual (energy, transportation, healthcare, communications, mining, data processing or storage, digital systems, aerospace and defense activities, sensitive facilities, and real property indispensable to such infrastructure).
- **Critical technologies and dual-use products** (artificial intelligence, robotics, semiconductors, cybersecurity, aerospace and defense technologies, energy storage, quantum and nuclear technology, nanotechnologies, and biotechnologies).
- **Supply of essential inputs** (energy, raw materials, and food security).

- **Access to or control of sensitive information**, particularly personal data.
- **Analogous sectors** that the CNIE may designate by general resolution.

C. Response Deadlines

- **Resolution: 60 business days** from the filing of the application, extendable once for up to an additional **30 business days** when warranted by the complexity of the matter.
- **Information request:** the CNIE could request information within the first **20 business days**, and the applicants would have between 5 and 30 business days to respond; the period would be suspended once, and the proceeding would be dismissed if the request is not addressed.
- **Deemed denial:** if the period expires without a resolution, the application would be deemed **denied**; that is, deemed approval would not apply.

D. Proposed Effective Date

- The decree would enter into force on the **day following** its publication in the Official Gazette of the Federation (*Diario Oficial de la Federación*), and the CNIE would have **180 calendar days** to issue the general resolution establishing the asset threshold.

E. Sanctions Regime

Conduct	Penalty (UMAs)	Approx. Equivalent (MXN)
Acts or acquisitions that required authorization, carried out without obtaining it	1,000 to 5,000	$117,310 to $586,550
Foreign legal entities that habitually conduct commercial activities without authorization from the Secretariat	500 to 1,000	$58,655 to $117,310
Neutral investment in contravention of the law	100 to 300	$11,731 to $35,193
Omissions, late filings, or incomplete or incorrect information in registrations, reports, or notices submitted to the Registry	30 to 100	$3,519.30 to $11,731
Simulated transactions for the use or disposition of real property located within the Restricted Zone	Up to the amount of the transaction (not expressed in UMAs)	—
Transfer of an equity interest despite a denial or without a prior favorable resolution	5,000 to 200,000	$586,550 to $23,462,000
Failure to comply with mitigation measures	5,000 to 200,000	$586,550 to $23,462,000
Other violations of the law	100 to 1,000	$11,731 to $117,310

Note on the calculation: the initiative replaces references to "wages" with "times the daily value of the Unit of Measure and Update (*Unidad de Medida y Actualización*, UMA)." The peso equivalents were calculated using a daily UMA value of $117.31 and are merely illustrative, as that value is updated annually in accordance with the figures published by INEGI.

F. Other Legal Consequences

In addition to fines, the CNIE could prohibit the acquisition or authorize it subject to ongoing reporting and verification obligations. Administrative sanctions would be imposed without prejudice to any applicable civil or criminal liability, and potential offenses would be referred to the competent authorities.

The initiative does **not expressly provide** for imprisonment, automatic nullity, or mandatory divestment; however, the reference to civil or criminal liability that "may apply" leaves that avenue open under other provisions currently in force (e.g., simulation of legal acts, fraud, or false statements before an authority other than a judicial authority, among others).

G. Critical Considerations

- **Breadth of concepts and discretion.** Concepts such as "risks or threats" to national security, "sensitive facilities," or the addition of "analogous" sectors by general resolution give the CNIE broad discretion, which may be subjective and unpredictable. In practice, invoking national security could operate as a barrier to entry for legitimate investments.
- **Pending threshold and deemed denial.** The asset threshold remains to be defined, and the authority's silence would result in a denial, meaning an administrative delay could block a transaction without a substantive decision.
- **Limited review.** No specific review or appeal mechanisms are established to ensure proportionality in the face of adverse resolutions beyond the general remedies available. Taken together, these factors could add conditions precedent to closing and regulatory uncertainty to transaction timelines and feasibility.

If approved, the initiative would require foreign investors and the Mexican companies involved to analyze, from the earliest stages of the transaction, the sector in which the target company operates, the percentage interest to be acquired, and the value of its assets. In addition, CNIE authorization would need to be included as a condition precedent to closing, with *long-stop dates* that account for periods of up to 90 business days (60 plus a 30-day extension) and any potential suspensions arising from information requests.

Von Wobeser y Sierra will monitor the progress of this initiative, and our team remains available to assess its impact on your investments and transactions in Mexico and to design compliance and risk-mitigation strategies.

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