



Construction

in 35 jurisdictions worldwide

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Mexico

Miguel de León Pérez and Verónica Cantú Leal

JA Treviño Abogados

1 Joint ventures

Must foreign designers or contractors enter into a joint venture with a local contractor to design, build and be paid for their work? Does the law require that the local contractor control the joint venture?

Mexican law does not require foreign designers or contractors to enter into a joint venture with a local contractor in order to be able to design, build and be paid for their work. However, and as an exception, the Mexican Foreign Investment Law requires that in the construction of railways and pipelines foreigners enter into a joint venture structure in which they have a maximum participation of 49 per cent, unless they are granted an approval by the Foreign Investment's National Commission to increase such participation. In all other types of construction a foreign designer or contractor may establish its business operations in the way most suitable to its needs; for example, they may incorporate a Mexican business entity to carry out their operations, and the contractor or designer can perform their business operations in the same way as any other domestic contractor or designer.

2 Foreign pursuit of the local market

If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before they took such a step?

In Mexico a foreign designer or contractor should address several key factors before starting their operations in the country. The first step would be to study and analyse the local market in search of possible competitors or partners. Construction in Mexico is a very competitive business and therefore it can help the foreign designer or contractor to know the other companies involved in the market. After a comprehensive study of the local market has been made, the foreign designer or contractor must decide if the business operations will be performed through a branch or representation office or through a newly formed Mexican subsidiary.

A branch is a business entity which is formed outside Mexico but is allowed to operate in Mexico through a permit issued by the Ministry of Economy. The branch would be subject to tax registration in Mexico, so it will pay taxes and generally operate within the restrictions established by the Mexican Foreign Investment Law regarding the activities that can only be performed by the state or those in which foreign investment has a limited participation.

Starting a new Mexican company is another option for starting business operations in Mexico, and although other corporate forms are available, the most common types are a company limited by shares and the limited liability company. The company limited by shares has a minimum capital of 50,000 Mexican pesos and requires a minimum of two shareholders. The limited liability company requires a minimum capital of only 3,000 Mexican pesos and also requires two members for it to be incorporated.

The complexity of Mexican tax issues is another concern that needs to be addressed before commencing operations in Mexico. The

complexity will slightly vary according to the type of business entity that will be performing the business operations. Generally speaking, Mexico has a dual tax system, applying both a tax on revenues and a flat rate tax, under which tax revenue payments are credited towards flat rate taxes. Additionally, sales and services are subject to value added tax.

Labour issues are also of significant importance in the construction business worldwide and Mexico is no exception. Labour matters in Mexico are complex and employers under Mexican law are bound to maintain a worker in its position until the construction project has been concluded, or otherwise pay him severance which is equal to at least three months' salary (among other benefits) for unjustified dismissal. If there is an intention to hire any foreign employees for the project, they will need to obtain a work visa from the Ministry of Foreign Affairs.

When choosing a construction site the designer or contractor must analyse if the construction project is compatible with the land use applicable to such construction site. In the event that the applicable land use is not compatible with the construction project, the construction work will not be able to start until a permit has been obtained to modify the land use (to the extent permitted under applicable law).

3 Licensing procedures

Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences for working without a licence?

In Mexico there is no need for a foreign designer or contractor to obtain a specific licence in order to be allowed to work in the construction business. Nevertheless, each state has its own laws regarding construction permits and working without a permit will have as a consequence the obligation to pay a fine, the stoppage of all construction work and in some cases even criminal penalties. All designers and contractors must obtain a construction permit or licence, as established by each state's and municipality's laws, regardless of their citizenship.

4 Labour requirements

Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

Yes, the Mexican Federal Labour Law has a protective provision that is applicable to all types of industries, not only construction. The law indicates that the employer must make use of a minimum of at least 90 per cent local labour. The rule also specifies that in the categories of technicians and professionals, the employees must be Mexican nationals unless there are no professionals with the required specialisation, in which case foreign workers may be hired temporarily, without exceeding 10 per cent of the total number of employees. The employer and the foreign workers are bound to teach the specialisation skills to the Mexican workers. This provision is not applicable to administrative employees, directors and general managers.

5 Local labour law

If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

The Mexican Federal Labour Law allows employers to hire employees for the performance of a specific task, as a type of employment model. This type of employment is very common in the construction business because the employment relationship will be in effect until a specific task or project has been completed. After the specific task has been completed, the labour relationship between employer and employee ceases to exist, and therefore no obligation remains between them.

Workers hired for a specific task or project have the same rights regarding minimum wage, work hours, resting days and other law benefits granted to any other employee. In the event that a worker is terminated by the employer before completing the task or project he was hired to do without incurring any of the justified termination causes contemplated by law, such termination will be considered as unjustified. In the event of an unjustified termination of employment, the employer is bound to make the following payments as severance:

- three months' wages, based on the amount of the wage at the termination date;
- seniority premium, consisting of 12 days per year of rendered services or its proportion;
- ongoing wages from the date of termination and until the date of the full payment of severance; and
- accrued benefits contemplated by law, such as any accumulated bonus.

6 Health and safety regulation

Are there any specific health and safety rules regulating the construction industry?

Each state in Mexico has enacted laws and regulations that govern occupational health and safety within that jurisdiction. Generally the Urban Development Law of each state establishes a broad set of rules while each municipality establishes its own specific regulations. A state's Urban Development Law will establish the safety rules for protecting the private and public property that could become damaged as a consequence of construction activities. The health and safety rules applicable to workers are included in the Federal Labour Law, the Safety, Hygiene and Work Environmental Federal Regulation, the Official Mexican Standards, the International Labour Organisation Treaties subscribed by Mexico, as well as the construction regulations of each municipality. Some of those rules include the following:

- evaluation of the workplace risks;
- setting up drinkable water stations, as well as bathroom services;
- setting up first aid stations;
- providing workers with occupational health and safety courses;
- establishment of safety devices against fires or any other possible risk; and
- specifying evacuation and rescue routes.

7 Close of operations

If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

When a foreign contractor operating through a Mexican subsidiary decides to close its operations, a shareholders' or members' meeting must be held in which the liquidation and dissolution of the company is agreed (as is the case with all Mexican companies). The minutes of such meeting must be filed before the Public Registry of Commerce so any creditor may collect outstanding debts from the company.

Regardless of whether the contractor incorporated a Mexican subsidiary or not, it must terminate the labour relationship with his employees. The employees will have liquidation priority over any creditor, and their rights and benefits established in the Federal Labour Law and the Social Security Law for an unjustified dismissal (see question 5) will also be protected. Any worker that considers the payment of the obligations to be unfair will have the right to file a claim against the employer with the Local Conciliation and Arbitration Board. The contractor will not be able to close its operations in Mexico until all its labour obligations have been fulfilled.

If the contractor incorporated a Mexican subsidiary it will be necessary to cancel its tax registration, which will only be possible if there are no pending tax payments. In addition to obtaining a tax clearance from the proper authorities and the cancellation of the tax registration, the contractor must observe any other obligations that may exist according to the regulations of each state.

8 Standard forms of construction contracts

What standard-contract forms are used for construction and design?

There are no official standard forms of contracts in Mexico, as the agreements vary significantly depending on the nature of the construction project and the terms and conditions agreed by the parties. Private construction projects will be executed through lump-sum payment, construction management services or unit-price contracts, which are governed by the Federal Civil Code. In the lump-sum payment agreement the risks of the construction costs are imposed upon the construction company, whereas in the other two types, the risks may be assumed either by the final owner of the construction or by the construction company depending on the contract terms.

Public construction projects are subject to a public bid in which everyone who qualifies with the bid terms competes to be awarded the construction. The bid terms and type of contract vary according to each state and each government level whether it is municipal, state or federal.

9 Price escalations

In typical construction contracts, who assumes the risk of material price escalation and shortages?

As previously explained, the Federal Civil Code explicitly states that with a lump-sum payment, the contractual risk of material price escalation and shortages is assumed by the construction company. On the other hand, the Mexican civil law allows the parties to establish who will bear the risk of price escalation and shortages in construction management services or unit-price contracts. The parties will be able to agree what suits them better according to each specific case with the sole exception of lump-sum payment agreements.

10 Competition

Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

Business in Mexico is based on the principle of free and fair competition. The Mexican Constitution explicitly prohibits any type of favouritism from the authorities towards any market competitor; therefore, Mexican law makes no distinction between a domestic and a foreign contractor. The Federal Commission of Economic Competition is the authority in charge of enforcing the fair competition laws and of punishing any company or government agency that violates those laws by granting a preferential treatment to a national or international company.

11 PPP and PFI

Is there a formal statutory and regulatory framework for PPP and PFI contracts?

The Public Works and Related Services Law instituted the general rules on public bidding and contracting that must be used in a public-private partnership (PPP) or in a private finance initiative (PFI). The law states that the bidding will be published in the Official Federal Journal and afterwards any interested party who qualifies based on the terms of the bid will be able to submit its proposal. Only one proposal will be accepted per party. The law contemplates the following types of public bids:

- domestic, in which participation is restricted to admit Mexican nationals only;
- international under a specific treaty, in which participation is restricted to admit Mexican nationals and foreigners from a country with which Mexico has an international free trade agreement applicable to government purchases; and
- open international, in which participation is allowed to all Mexican nationals and foreigners regardless of their country of origin.

The terms and type of contract will be included in each bidding notification as well as the corresponding payment conditions. The contracts used for public bids are lump-sum payment contracts, unit-price contracts or a mix of lump-sum payment and unit price. The law explicitly prohibits the negotiation of any of the public bid terms and the parties must agree fully with them in order to be allowed to participate in the process.

The Law of Acquisitions Leases and Services for the Public Sector instituted the general rules on public binding that are used when the government needs to purchase materials or any other specific service that is not contemplated in the Public Works and Related Services Law. Both laws resemble each other; the types of public bids are the same ones for both laws as well as the types of contracts allowed for the public bids.

In Mexico each state has its own regulations for performing public biddings; nevertheless all regulations are based upon the aforementioned laws. Once the award has been granted to one of the bid parties it will be its sole responsibility to perform the project without any modification whatsoever to the original award-winning proposal. Upon termination of the project, the party will end its responsibility towards the project and will have the right to claim the benefits stated in the contract.

12 Payment of fees

How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

Mexican law provides the contractor with different methods to secure its right of payment upon termination of the construction. The Federal Civil Code allows the contractor to withhold the constructed property until its construction fees and costs have been paid by the owner. For securing such payments the contractor has the following options:

- request a permit to sell the constructed property to any interested third party;
- request a mortgage over the land or property itself, or over both;
- request personal guarantees usually from third parties other than the owner; under such a guarantee, an undetermined portion of the assets of the guarantor, without distinction or limit, represents the security; or
- request guarantees in rem that will work as collateral to secure payment of contractor fees; as opposed to personal guarantees, under a guarantee in rem a particular asset or assets are set aside as security.

Any of the aforementioned options should be included in the construction agreement at the time of its execution or be contained in a separate agreement (preferably) prior to starting the construction work.

13 Tort claims and indemnity

Do local laws permit a general contractor to be indemnified against all acts, errors and omissions arising from the work of a subcontractor, even when the general contractor is negligent?

The Federal Civil Code establishes that the contractor will only be able to use the work of a subcontractor if this has been agreed in the contract or if it is agreed afterwards by the owner. In any case the contractor will be held liable for any act, error or omission that may arise from the construction work. The contractor will have to indemnify the owner even if the acts, errors or omissions were caused by the subcontractor.

In order to be protected against such claims and indemnity, the owner should include clauses in the subcontractor agreement that stipulate the subcontractor's responsibility and obligation to indemnify the contractor if a problem arises as a consequence of the quality of its work.

The Civil Code of the specific state in which the construction project is being performed will govern the subcontractor's liabilities towards the constructor. Each Civil Code has a general section regulating the civil liabilities that may arise as a consequence of a breach of the terms of a contract. While certain minor provisions vary from state to state, the general terms of liability are standard throughout Mexico.

14 Liability to third parties

Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

Mexican civil law establishes that a contractor will be held liable for the flaws or hidden defects that may arise in relation to the quality and suitability of the materials, works or the construction site project, regardless of who will be its final owner. As previously stated (see question 13), the contractor will also be held liable for the quality and suitability of the works and materials used by a subcontractor regardless of the final owner of the construction project. Therefore, any third party may pursue a claim against the contractor despite the lack of a contractual relationship.

The Federal Civil Code establishes that when the materials employed in the building are directly selected by the owner, despite warnings regarding their lack of quality by the contractor, the contractor will not be held liable for any flaws or hidden defects in the construction. The same applies when the owner selects the construction site despite warnings from the contractor stating that such terrain is not appropriate for constructing the desired building.

15 Insurance

To what extent may a contractor obtain insurance to cover its contractual risks?

In Mexico a contractor may obtain full-risk insurance to cover its contractual obligations. The contractor has the option to acquire insurance that covers the risks prior to the initiation of the construction for the risks during the construction or for the risks that could arise after the construction has been completed.

Construction insurance typically protects the contractor against fires, total or partial destruction of the construction as well as any damage caused by acts of God or civil disturbances. Insurance can also cover any civil liability imposed on the contractor as a consequence of any damages it may cause to third parties.

Civil law forces the contractor to insure all of its workers against any harm that could result as a consequence of the activities performed during the construction period.

16 Statutory payment protection

Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

The Federal Civil Code establishes that when the construction project is interrupted or cancelled by order of the owner, it will need to cover any unpaid fees for the expenses and works of the contractor as well as compensate it for the losses that arise from such decision. Both parties should include explicit provisions when executing the construction contract that foresee the cases in which the owner will be held liable for an interruption or cancellation of the construction project.

There may be cases when the interruption or cancellation of the construction is not the fault of the owner. Nevertheless, a contractor may be reimbursed for its expenses and losses if it previously acquired an insurance policy (see question 15). An insurance policy can cover the contractor for an interruption or cancellation of the construction project as a consequence of acts of God, non-viability of the project, and absence of permits and lack of financing.

17 Contracting with government entities

Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

No, in Mexico government agencies act as any other legal entity when executing contracts with another legal entity or individual. Therefore, they cannot claim sovereign immunity as an excuse for failing to pay the contractor for its work. In many cases the government agencies may be slow with the payment process but they usually pay their debts as regards the contractor.

18 Bribery

If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable?

The Federal Criminal Code establishes that bribery is a criminal offence that is prosecuted against the person who offers the bribe and against the person who accepts it. Therefore, no contract may be enforceable when it is proven that it was illegally awarded by a bribe. Bribery is punished with jail terms that go from a minimum of two years to a maximum of 14 years plus the imposition of a fine according to the specific case. In the case of a public servant, the sanctions also involve its destitution and the disqualification to hold a future position in any other public office. The money involved in the bribe will not be returned to any of the parties under any circumstance and will be employed for the benefit of the state.

19 Arbitration

What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

Arbitration is commonly preferred over litigation whenever possible, particularly in agreements with foreign contractors. Most parties prefer arbitration in order to avoid extensive legal expenses, damage to their public image, lengthy court trials and any risk to their future business relations. Confidentiality is another benefit of arbitration that the parties usually seek. Arbitration can solve conflicts between individuals or between individuals and government agencies. Nevertheless there are certain issues that cannot be submitted to arbitration such as criminal offences, labour conflicts or any other conflict that may affect the public interest. A downside to arbitration, which is also commonly considered by some parties, is the fact that the award

is final and non-appealable. Certain parties prefer to have the opportunity to seek a review of a resolution from a court and not fully rely on the judgment of the arbitrators.

20 Foreign corruption

Does local legislation prohibit corrupt practices carried out abroad by persons domiciled in your jurisdiction?

The Federal Criminal Code dictates that any person that corrupts a foreign public servant in order to receive an advantage in the development or performance of an international business transaction will be prosecuted. The law indicates that such criminal offence will be punished in the same way as bribery (see question 18).

The law defines 'foreign public servant' as a person who holds a position, job or a public function at the judiciary, legislative or executive powers of a foreign state, and includes positions in governmental agencies and companies controlled directly or indirectly by the government, regardless of the order or level of government, as well as in international public organisations.

21 Force majeure and acts of God

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

Local laws establish that contractors are not liable for damages arising from events beyond their control such as acts of God or force majeure. Contractors will not be held liable for acts caused by men such as wars, riots and strikes. A contractor will only be held liable for negligence if it was possible to prevent or avoid the event.

22 Dispute resolution mechanisms

What dispute resolution procedures are successfully used to solve construction disputes?

Legal proceedings filed before a Mexican court can take a long time before receiving a final resolution since the parties have the possibility to appeal the initial judgment and request a constitutional protection afterwards. In order to avoid lengthy and costly trials, the parties have the option to agree in the contract that any dispute will be solved through negotiation, mediation or arbitration. These dispute resolution mechanisms offer advantages that certain parties prefer over a regular trial, such as confidentiality, damage to the parties' public image, lengthy court trials and any risk to their future business relations (see questions 19 and 25).

23 Courts and tribunals

Are there any specialised tribunals that are dedicated to resolving construction disputes?

There are no courts or tribunals specialised in solving construction disputes in Mexico. Nevertheless there are arbitration bodies that are dedicated exclusively to solve construction disputes. The Mexican Chamber of Industry and Construction has the most renowned arbitration body for solving conflicts between individuals involved in the construction business who agree to submit themselves to its ruling.

24 Dispute review boards

Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

Dispute review boards can be used if the parties agreed to use them in the contract or afterwards. The DRBs are typically formed by three experts previously appointed by the parties; nevertheless a DRB can be formed by the appointment of only one expert. The decisions of the DRBs are non-binding unless the parties decide otherwise beforehand.

25 Mediation

Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from?

The practice of mediation is not regulated by any specific law in Mexico. Nevertheless, mediation is often used willingly by the parties as a dispute resolution procedure prior to the arbitration. Mediation is not used as much as arbitration for solving disputes since the final opinions of the mediators are non-binding, in contrast with arbitration awards which are obligatory for the parties. Mediators can be appointed by the parties or by a professional association to which the parties submit such request.

26 Confidentiality in mediation

Are statements made in mediation confidential?

Since mediation lacks formal regulation from a specific law in Mexico, there is no prohibition for using the statements made in it in another type of proceeding, either private or legal. However, the parties may specify that such statements will be confidential when executing the contract; therefore they may not be quoted in any other proceeding. When the mediation is provided by a professional association sometimes their internal rules require the parties to agree to a confidentiality clause prior to the initiation of the procedure.

27 Arbitral award

Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

An arbitral award, regardless of its origin, will be rejected by the Mexican local courts if it is contrary to the Constitution or to any other public law. The Code of Commerce establishes the rules for any arbitration that is performed in Mexico as well as the rules for executing any award granted by a foreign or international arbitration tribunal. The code also provides the procedural violations that will nullify the validity of the award. Such procedural violations are:

- incapacity of one of the parties;
- failure to notify the initiation of the arbitration to one of the parties;
- failure to notify the appointment of one of the arbitrators;
- the award exceeds its jurisdiction by covering a topic not specified in the arbitration agreement; or
- the arbitration tribunal or arbitration procedure not performed in accordance with the arbitration agreement.

In order to begin the exequatur process a Spanish official court-approved translation of the award must be submitted to the judge who will enforce it.

28 Governing law and arbitration provider

If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

Mexican legislation has no preference or resistance towards hearings from a particular jurisdiction or arbitration organisation. The parties themselves select the arbitrators or the arbitration institution that will solve their dispute. Even though there are several arbitration institutions in Mexico the major international institutions are preferred for complex cases since they are more experienced.

Some of the most commonly used international institutions for solving complex disputes include:

- the International Court of Arbitration;
- the London Court of Arbitration;
- the American Arbitration Association; and
- the International Centre for Dispute Resolution.

Update and trends

There are several trends in the Mexican construction industry. Mexico has a significant infrastructure and housing deficit, which is triggering a large number of construction projects in the country. The global financial recession has significantly affected the construction business. Although the affects have diminished somewhat, they are definitively ongoing, but are expected to be reduced considerably as soon as financing becomes more readily available. Within the housing sector, the construction of multi-family complexes is quickly expanding, replacing houses, particularly in the mid-level housing sector.

Tourism construction is also booming in Mexico. While Mexico has long been an international tourism destination and a good number of first-class destinations are available, construction has recently increased in the 'second home' sector, attracting a considerable number of foreigners who consider Mexico as their retirement destination. Top luxury tourism is also a niche area, which continues to enhance the construction sector.

Foreign companies are becoming much more involved in construction projects in Mexico. A number of companies participate in the business of self-financing tourism projects, and more and more international companies are coming to Mexico to participate in top-end infrastructure projects.

29 International environmental law

Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

The Stockholm Declaration of 1972 is a non-binding instrument in Mexico; nevertheless it has been reaffirmed by Canada, Mexico and the United States through the North American Agreement for Environmental Cooperation (NAAEC). The NAAEC came into force as a side-treaty of the North American Free Trade Agreement (NAFTA), which was signed and ratified by the three countries named above.

Mexico has also signed and ratified several multilateral treaties regarding environmental and wildlife preservation. Domestic legislation also provides for environmental protection with laws such as the Urban Development and Ecology Law, the Ecology Equilibrium and Environment Protection General Law, the Vegetal Sanitation Law and the Animal Sanitation Law. Each state also has its own legislation regarding environmental protection applicable to its own jurisdiction.

30 Other international legal considerations

Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

In addition to the risks and issues inherent to the construction sector and in any other business, the most important legal issues that are faced by any company that wishes to invest or do business in Mexico are the particularities of its tax system and the labour legislation, which is regarded as strict and prohibitive towards employers (see questions 2, 4 and 5).

These obstacles are faced by any company regardless of the industry in which they operate or their nationality. Mexican companies also face the same obstacles; therefore no advantage exists for domestic companies when competing against foreign companies.

31 International treaties

Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

No, Mexico is not a signatory to any investment agreement targeted to specifically protect the investment of a foreign entity in construction and infrastructure projects.

Nevertheless, NAFTA governs US and Canadian general investment in Mexico. In addition to NAFTA, most of Mexico's 11 other free trade agreements (FTAs) cover general investment protection, with a notable exception being the Mexico-European Union FTA. The network of Mexico's FTAs containing investment clauses encompasses the countries of Bolivia, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Japan and Nicaragua.

Mexico has enacted formal bilateral investment protection agreements with 24 countries: 14 European Union countries (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, the United Kingdom), as well as Argentina, Australia, Cuba, Iceland, India, Panama, South Korea, Switzerland, Trinidad and Tobago, and Uruguay. Agreements with China, Belarus and Slovakia were signed in 2007 and 2008, but the Mexican Senate still has to ratify them in order for them to become effective under Mexican law. Mexico continues to negotiate bilateral investment treaties with the Dominican Republic, Malaysia, Russia, Saudi Arabia and Singapore.

32 Tax treaties

Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

Yes, Mexico has entered into double taxation treaties with many countries around the world, especially with those countries from which Mexico frequently receives investments, in order to avoid the contractor's double taxation.

For instance, Mexico and the United States have a bilateral tax treaty to avoid double taxation and prevent tax evasion. Important provisions of the treaty establish caps for Mexican withholding taxes on interest payments and US withholding taxes on dividend payments. Also, Mexico and the United States have a tax information exchange agreement to assist the two countries in enforcing their tax laws. The Financial Information Exchange Agreement (FIEA) was enacted in 1995, pursuant to the Mutual Legal Assistance Treaty. The agreements cover information that may affect the determination, assessment and collection of taxes, and investigation and prosecution of tax crimes. The FIEA permits the exchange of information with respect to a large amount or suspicious currency transactions to fight illegal activities,

particularly money laundering. Mexico is a member of the financial action task force (FATF) of the OECD and has made progress in strengthening its financial system through specific anti-money-laundering legislation enacted in 2000 and 2004.

33 Currency controls

Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

No, Mexico does not have any governmental currency controls that could make it difficult to transfer or exchange funds or profits from one currency to another. The private banks and money exchange houses set their own rates at which they will transact currency purchases and sales.

In Mexico, many industries use the United States dollar for their own operations, such as tourism and construction, in which the prices established in the real estate contracts executed under Mexican legislation are commonly set in US dollars.

34 Removal of profits and investment

Are there any controls or laws that restrict removal of profits and investments from your jurisdiction?

No, there are no controls or laws restricting removal or distribution of profits and investment from Mexico. Investors from any nation may freely repatriate their profits, royalties, dividends and interest payments in compliance with the law.

35 Contractual matrix of international projects

What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

The most typical contractual matrix for these kinds of projects in Mexico is that the owner contracts directly with the contractors of the project, especially if such companies acting as the owner have construction specialists within their personnel. However, some large companies choose to contract a construction manager to do the direct contacting with the contractor. It depends on the owner's structure or preference.

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