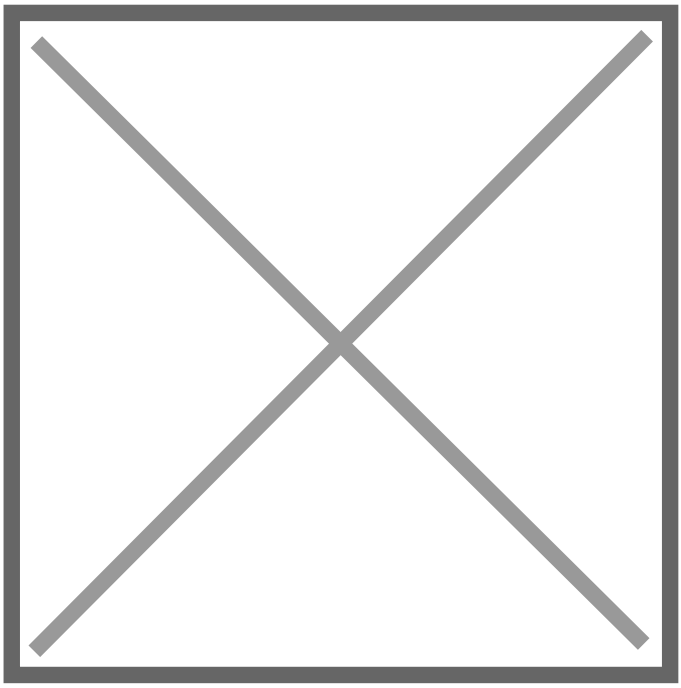


NAFTA 2.0 limits protections to foreign investments

Regarding foreign investment, USMCA largely replicates the protections provided under the 1994 NAFTA and which are typically afforded by bilateral investment treaties such as: minimum standard of treatment—which considers fair and equitable treatment and full protection and security—, national treatment, most-favored-nation treatment, transfers and protections in case of direct or indirect expropriations.

Under USMCA, such protections may be claimed only by American and Mexican companies working on the Oil and Gas, Energy, Telecommunications, Transportation and Infrastructure sectors, provided that they hold a government contract or carry out activities related with one of these sectors. Neither Canadian companies with investments in Mexico or in the United States, nor Mexican or American companies with investments in Canada shall have access to arbitration under USMCA.

Companies that do not participate in any of the abovementioned sectors will only be able to submit to arbitration violations involving national treatment or most favored nation treatment—which require the government's implementation of a measure intended to discriminate a company by reason of its nationality—and violations involving a direct expropriation. Any other treaty violations must be submitted before national courts. USMCA provides a specific chapter for financial services which also sets forth an investment arbitration mechanism that is limited to the abovementioned narrower scope of protections.

USMCA significantly limits the protection to foreign investment by making claims involving violations to fair and equitable treatment and indirect expropriation not subject to investment arbitration. In the absence of such protections, investors will not be able to resort to arbitration to defend against government harassment, abrupt regulatory measures or the unjustified termination of any agreement or permit.

Should you have any questions about the implications of the USMCA, please contact Bernardo Sepúlveda Amor, head of our Arbitration and Dispute Resolution Practice.

Bernardo Sepúlveda Amor
bernardo.sepulveda@creel.mx

Tel: +52 (55) 4748-0621

**This article or news brief does not constitute legal advice and is protected by copyright.*

Throughout this website "Creel" and the "Firm" refer to Creel, García-Cuéllar, Aiza y Enriquez, S.C. Creel is a law firm founded in 1936 and domiciled in Mexico. Creel, García-Cuéllar, Aiza y Enriquez, S.C.

Copyright
Privacy Notice
Disclaimer