CREEL GARCÍA-CUÉLLAR AIZA Y ENRÍQUEZ

Airs of change for Foreign Direct Investment Regime in Mexico

On December 7, 2023, the U.S. Secretary of Treasury and the Mexican Finance and Public Credit Secretary met and signed a memorandum of intent (MoI) to discuss and exchange information on how foreign investment screening may aid in protecting national security.

The current Mexican foreign direct investment regime follows a broad open policy. Overall, under Mexico's Foreign Investment Law (FIL), irrespective of their jurisdiction of origin, foreign investors are generally allowed to participate in most sectors and activities in Mexico without restriction (i.e., maximum percentage, control or otherwise). The exceptions to the broad foreign direct investment participation are few and address Mexican concerns over national security and sovereignty principles, in which case approval from the National Commission of Foreign Investments (CNIE) must be obtained prior to the investment. Restricted activities include those reserved for the Mexican State, such as the exploration and extraction of hydrocarbons, planning and controlling the national power system, power transmission and supply, postal services, surveillance of infrastructure (ports and airports), and issuance of bills and minting coins. The law contemplates a few specific activities, such as, among others, domestic motor transport, that allow for private investment but that are forbidden for foreign investors. Approval is required for foreign investors to participate in excess of 49% of the voting capital stock of Mexican companies engaged in the provision of port services, exploitation of ships, airfields for public service, private education services, legal services or railway transportation, or when the aggregate value of the assets of the Mexican target company exceed of $24,979,862,979.30 Mexican pesos (or approximately USD $1,465,455,595).

In line with the U.S. and Mexico's continued close cooperation on financial and economic matters, it is no surprise that the intention of the MoI is to extend the discussions on foreign investment screening and set the initial guidelines for its modernization and coordination among regulators. In this regard, the U.S. Secretary of the Treasury disclosed understanding to create a bilateral working group on foreign investment screening. In addition, in their respective public statement s, both Secretaries agreed that globalization requires a new policy and method that will lead to a greater degree of collaboration, and emphasized the importance of consulting policies, specifically regarding "national security risks that can arise from certain foreign investment, particularly in certain technologies, critical infrastructure and sensitive data". In this respect, the Mexican Secretary of Finance and Public Credit echoed President Lopez Obrador's words on the need to protect particular geographic areas and industries, such as lithium.

Between January and September 2023, Mexico received US$32.926 billion dollars of foreign direct investment. Enhancing the foreign investment regime should therefore be a priority for the Mexican Government to ensure development, especially considering the opportunities arising as a result of so-called "nearshoring" dynamic focused on Mexico as a suitable and strategic host territory. Following the trend of the 1980s and 1990s when Mexico shifted towards an FDI-friendly policy, where the country experienced a substantial impact on its ability to actively participate in the globalization process and effectively compete with global economic powers.

The agreement to cooperate and establish a working group between the U.S. and Mexican governments in foreign investment policies signals a potential shift in trend, and while it is too early to assess the implications that the agreement will have for Mexico, it is very likely that FDI regulation will change in a near future. It is important to clarify that MoI is only an understanding between the two countries and has not the same rank than an international treaty.

For more information, please feel free to contact:

Luis Gerardo García
T: +52 (55) 4748 0610

luis.garcia@creel.mx

Leonel Pereznieto
T: +52 (55) 4748 0614
leonel.pereznieto@creel.mx

Mauricio Serralde
T: +52 (55) 4748 0661
mauricio.serralde@creel.mx



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