CREEL GARCÍA-CUÉLLAR AIZA Y ENRÍQUEZ

APPROVAL OF THE AMENDMENTS TO THE FOREIGN INVESTMENT LAW ON NATIONAL SECURITY

On October 27, 2026, the Chamber of Deputies approved the Decree amending, adding and deleting several provisions of the Foreign Investment Law (the "FIL"), which had been previously approved by the Senate on September 30, 2026. For the first time, the amendments establish a prior authorization procedure on national security grounds. Under this procedure, foreign investment will require a favorable resolution from the National Foreign Investment Commission (the "CNIE") to hold more than 49% of the capital stock of Mexican companies that engage in activities deemed strategic and whose assets exceed the threshold set by the CNIE.

The Decree is pending publication in the Federal Official Gazette ("DOF") and will enter into force on the day following its publication, which is expected to occur within the coming days or weeks.

NEW PRIOR AUTHORIZATION PROCEDURE

A favorable resolution from the CNIE will be required when the following conditions are met:

- Foreign investment intends to hold, directly or indirectly, more than 49% of the capital stock of a Mexican company;
- The total value of the Mexican company's assets, at the time the application is filed, exceeds the amount set by the CNIE through a general resolution that the CNIE must publish in the DOF within 180 calendar days from the day following publication of the Decree; and
- The Mexican company carries out any of the following economic activities:
  i. Strategic infrastructure, physical or virtual, including infrastructure related to energy, transportation, health, communications, mining, data processing or storage, digital systems, aerospace, defense and sensitive facilities, as well as land and real estate essential to its use;
  ii. Critical technologies and dual-use products, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies, nanotechnology and biotechnology;
  iii. Supply of critical inputs, particularly energy or raw materials, as well as food security;
  iv. Access to sensitive information, particularly personal data, or the ability to control such information; and
  v. Other analogous activities or economic sectors determined by the CNIE through a general resolution.

If the intended stake exceeds 49% but the company's assets do not exceed the threshold, filing will be voluntary. This procedure is in addition to the authorizations already provided for in Articles 8 and 9 of the FIL, whose application must be analyzed separately.

The CNIE must issue its resolution within 45 business days. Tacit approval (*afirmativa ficta*) does not apply to national security matters. In the absence of a resolution, the Federal Administrative Procedure Law, which applies on a supplementary basis, would govern, and it provides for tacit denial as the general rule.

COMPOSITION OF THE CNIE

- The Ministries of Defense, the Navy, and Security and Citizen Protection, as well as the Digital Transformation and Telecommunications Agency, become members with voice and vote.
- In sessions on national security matters, the Attorney General's Office, the National Intelligence Center, the Tax Administration Service and the Financial Intelligence Unit will attend as permanent guests, with voice but no vote.
- In national security matters, members may not abstain from voting, and resolutions will be adopted by majority of all CNIE members.

POSSIBLE OUTCOMES

The CNIE may: (i) approve the transaction, upon finding no risks or threats to national security; (ii) require changes to the transaction to mitigate risk, to be carried out by the parties; or (iii) block the transaction on national security grounds. Favorable and conditional resolutions will include case-specific terms and conditions, which may involve periodic reporting and an assessment of compliance with Mexican law.

SANCTIONS

Fines will be calculated in Measurement Units ("UMA"), and new infringements are added for transferring the equity interest to the foreign investor without a prior favorable resolution or despite a denial by the CNIE, and for failing to comply with mitigation measures imposed by the CNIE, both punishable by fines of 5,000 to 200,000 UMA (approximately MXN$586,550 to MXN$23,462,000 at the 2026 UMA value). In addition, the CNIE is empowered to order divestment.

OPEN POINTS

- The practical scope of the filing obligation will depend on the asset threshold set by the CNIE and on any additional activities it may designate through general resolution.
- The amendments do not define "national security" for these purposes or set out the factors the CNIE will consider in its review.
- Procedural details, including the information to be submitted with the application, are to be developed in the FIL Regulations.

RECOMMENDATIONS

- Identify ongoing or contemplated transactions involving Mexican companies active in the covered sectors, and assess their timing against the Decree's entry into force.
- Address the CNIE authorization in transaction documents (conditions precedent, cooperation covenants for the joint filing, allocation of mitigation risk and long-stop dates).
- Coordinate the timing of this authorization with other applicable approvals, including merger control filings before the National Antitrust Commission and foreign investment screening mechanisms in other jurisdictions.

If you have any questions, please feel free to contact our partners Carlos del Rio, Leonel Pereznieto, and/or Mauricio Serralde.