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SOME CONSIDERATIONS ON THE MEXICAN LAW ON FOREIGN INVESTMENTS

LEONEL PEREZNIETO*

I. INTRODUCTION

The modern Latin American movement in the area of regulation of direct foreign investment began with decision number 24 of the Cartagena Agreement Commission, passed during the December 1970, and the June and July 1971 sessions. This decision defined direct foreign investment as:

The contributions, originating abroad and owned by foreign individuals or enterprises, to the capital of an enterprise, represented by freely convertible currencies, industrial plants, machinery and equipment, entitled to re-exportation of their value and to remittance abroad of profits. Likewise, those investments in national currency originating from resources entitled to remittance abroad shall also be considered as direct foreign investments.¹

In addition to the foregoing categories, decision 24 also defined

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1. Decision 24 of the Andean Commission, Treatment of Foreign Capital, Dec. 31, 1970, art. 1, *reprinted in* 10 INT'L LEGAL MATERIALS 152 (1971).

national investor, joint enterprise, and reinvestment, among others. This decision was adopted by the Cartagena Agreement signatories, which are five South American countries.²

This precedent served as a basis for Mexico, and later other Latin American countries, to establish their own national regulations concerning foreign investments. Two stages can be examined in the specific case of Mexico: the period prior to February 1973, the date on which the Law on Foreign Investments became effective, and the period following this enactment. The latter period will be the subject of this overview.

But before referring to the second stage, I should like to point out briefly some of the more relevant aspects of the first stage. The first instance of a foreigner's real estate being regulated in Mexico occurred in 1886.³ An additional authority for regulating such transactions is article 27 of the Mexican Constitution of 1917,⁴ which establishes that only Mexicans may acquire dominion over lands, bodies of water, and their accesses. Foreigners may make such acquisitions provided they relinquish, before the Mexican State, the right to take recourse in their countries' diplomatic protection, under penalty, in the event of violating their agreement, of losing the property acquired through said agreement, to the benefit of the Mexican Nation.⁵ This is the "Calvo Clause" adopted by various Latin American legislatures at the end of the last century.

Another established doctrine that I shall refer to further on, is known as the "prohibited zone" principle, which states that the zones from the border up to and including 100 kilometers, and from the coast up to and including 50 kilometers, are areas in which foreigners are prohibited from acquiring any kind of property.⁶ The regulations to article 27 of the constitution were not issued until 1926, that is, nine years after this constitutional provision. This was due mainly to diplomatic pressures from the United States. The oil expropriation of 1939 took place on the basis of these regulations.

2. The participants are Colombia, Chile, Peru, Bolivia and Ecuador. Cartagena Agreement, Decision 24, art. 30, *reprinted in* 10 INT'L LEGAL MATERIALS 152 (1971).

3. For an in-depth analysis of the history of real property investment in Mexico, see Quiroz, *Investment in Real Property in Mexico: An Overview of Constitutional and Statutory Restrictions*, 12 ARIZ. L. REV. 270 (1970).

4. CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS, art. 27 (1917) [hereinafter cited as MEX. CONST.].

5. This provision was codified in the Law of March 9, 1973, concerning Promotion of Mexican Investment and the Regulation of Foreign Investment, ch. 1, art. 3 (1973), D.O., March 9, 1973, at 5, *reprinted in* 12 INT'L LEGAL MATERIALS 643 (1973) [hereinafter cited as Foreign Investment Law].

6. *Id.* ch. 1, art. 7, para. 1.

Five years later, Mexico took advantage of the Second World War in order to set up a commission responsible for controlling and regulating foreign investment. It was not until 1953 that this commission issued a series of provisions on the subject. From this date on, the regulation was almost invalid until 1973 which, as I mentioned earlier, is the date that the Foreign Investment Law was issued.

II. NATURE OF THE LAW

It is not clearly established in the decree published in the Mexican Foreign Investment Law that this is a law of federal reach mainly for the following reasons: the Federal Constitution, in establishing the faculties of Congress, points out that the Houses have, *inter alia*, the power to pass laws on nationality and the legal status of foreigners.⁷ On the other hand, the same constitution states that "[t]he Nation shall at all times have the right to impose on private property those modalities that public interest might require"⁸ and that Congress has the power to legislate in matters of commerce throughout the Republic.⁹ A further reason is based on article 124 of the constitution, which establishes the implicit powers of the Federation. The Federal Legislature may grant unto itself certain implicit powers as the means to exercise some of its explicit faculties.¹⁰

III. WHAT IS CONSIDERED A FOREIGN INVESTMENT?

Article 2 of the Foreign Investment Law states that for the purposes of this law, foreign investments are those effected by:

- I. Foreign corporate bodies;
- II. Foreign physical persons;
- III. Foreign economic entities without legal personality; and
- IV. Mexican business enterprises with majority

7. MEX. CONST., art. 73, § XVI.

8. *Id.* art. 27, para. 3.

9. *Id.* art. 73, § X.

10. *Id.* art. 124. Professor Felipe Tena Ramirez tells us that, in order to make use of the implicit powers, it is necessary to fulfill three prerequisites: the existence of an explicit faculty that cannot be exercised *per se*; the relation between one and the other of means and end; and the recognition by Congress of the need for an implicit faculty and the granting of the same to that power requiring it. F. TENA RAMIREZ, *DERECHO CONSTITUCIONAL MEXICANO* (1970).

foreign capital or in which foreigners are empowered, by any title, to determine the management of the business enterprise.¹¹

Foreign investment in the capital of corporations or firms will be subject to this law in all matters pertaining to the purchase of property and to the transactions specified within the law.

A. *Foreign corporations or firms (juristic persons)*

Article 25 of the Civil Code for the Federal District establishes that, among others, these investors are Civil or Mercantile Partners and Corporations.¹² The Law of Nationality and Naturalization (Federal) in article 5 determines that partnerships and corporations will be considered of Mexican nationality if they are constituted in accordance with the Mexican laws, provided they establish legal residence in Mexico.¹³ Therefore, foreign partnerships and corporations are those associations that do not comply with the two aforementioned conditions.

The General Law for Mercantile Associations (*Ley General de Sociedades Mercantiles*), which is a federal regulation, states in article 250 that: "Legally incorporated foreign companies shall have juridical personality in the Republic of Mexico" and may effect commercial transactions in Mexico either permanently or occasionally, through their own establishment or by means of an agency or branch office.¹⁴

11. Foreign Investment Law, *supra* note 5, at 643.

12. See R. GAITHER, *HANDBOOK OF MEXICAN MERCANTILE LAW* (1948) [hereinafter cited as GAITHER]. Local common law in the federal district is applied to federal jurisdiction when possible. *Id. passim*.

13. Law of Nationality and Naturalization, art. 5, D.O., Dec. 31, 1949.

14. General Law of Mercantile Companies, art. 250, D.O., Aug. 4, 1934. Article 251 further requires:

I. Proof that they have been incorporated in accordance with the laws of their own country, . . . an authentic copy of their articles of association and all other statutory documents, accompanied by a certificate issued by the diplomatic or consular representative of the Republic of Mexico in their country, attesting that they are incorporated and authorized in accordance with the law.

II. That the articles of association and with the precepts of public order contained in Mexican Laws.

Id. See also Pereznieto, *La Nacionalidad de las Sociedades*, *El Foro*, July-Sept., 1972. A company functioning with the use of foreign capital cannot, in fact, be truly Mexican even though it was created in Mexico, in accord with Mexican laws, and has its legal domicile there, and even though Mexican law attempts to consider it as such. *Id.* at 55.

B. *Foreign individuals*

Article 33 of the Federal Constitution states that "those (persons) who do not possess the qualifications set forth in article 30, are considered foreigners."¹⁵ That is to say, persons who have not been born within the boundaries of the national territory (*Jus Soli*) or who are born in foreign lands, but of a Mexican father or mother (*Jus Sanguinis*); or those who have not acquired the Mexican nationality through naturalization procedures.

It behooves us to clear up that article 6 of the Foreign Investment Law makes Mexican investment equal to that which is effected by foreigners residing in the country as immigrants, except in those cases where, because of their work or occupation, they are linked to decision centers in foreign economies. In accordance with the General Law of Population (Federal),¹⁶ foreigners residing in Mexico acquire the status of *immigrado* (permanent alien resident) when they have resided in the country for five years as immigrants.¹⁷

C. *Foreign economic units without legal status (juristic personality)*

This concept is not to be found explicitly defined in our Mexican legislation. It is only in article 3, section III of the old Income Tax Law (Federal)¹⁸ that we find reference to it for fiscal purposes establishing: "Economic units without juridical personality, [are covered] only where this law taxes the income of such entities in its entirety."¹⁹

It is, perhaps, due to this circumstance that several authors have attempted to define the legal nature of these "economic units without juristic personality." Thus, Ernesto Flores Zavala explains that an economic unit without juristic personality is an association of individuals and corporations (juristic persons) that, not having legal status, constitutes an economic unit distinct from its members.²⁰

15. MEX. CONST., *supra* note 4, art. 33.

16. Ley General de Población, D.O., Jan. 7, 1974 [hereinafter cited as *Ley General de Población*]. See H. WRIGHT, *FOREIGN ENTERPRISE IN MEXICO* 202 (1971).

17. Ley General de Población, *supra* note 16, art. 53. See also Reglamento de la Ley General de Población, art. 125, D.O., Nov. 7, 1976.

18. Ley Del Impuesto Sobre La Renta (Income Tax Law), art. 3, D.O., Dec. 23, 1953, repealed by the Law of Dec. 30, 1964, D.O., Dec. 31, 1964 [hereinafter cited as LISR].

19. *Id.*

20. See E. FLORES ZAVALA, *ELEMENTOS DE FINANZAS PÚBLICAS MEXICANAS* (1955). This occurs when various independent associations coordinate their capital in such a way that in reality they constitute one economic unit that is considered a passive, independent subsidiary of each mother corporation that forms it. *Id.* at 66.

Another learned author attempts to extend this concept with the affirmation that it is

a collective juristic person formed by individual or complex entities that although considered juridically independent and separate, are linked in their capital, administration, and profit distribution in the joint or successive exploitation of a certain source of income. Furthermore, the joint economic endeavor of the economic units will produce a result different from the economic activity of each entity, individually considered.²¹

It is to be observed that this criterion embraces a number of concepts. Since it is an "economic unit lacking legal personality," it is my opinion that the Mexican legislature intended to refer to a variety of business enterprises, perhaps even to those not included in our corporation and partnership law, which could be, for instance, the case with partnerships, joint stock companies, or further still, of the commercial consortia, etc.²²

D. Mexican enterprises with a majority of capital holdings belonging to foreigners

It is to be noted that the Mexican legislature did not use the terms company, partnership, or corporation, but rather that of "enterprise," which has more of an economic than legal content. The Mexican law does not define "enterprise" in its strictest sense. It is, of course, feasible to interpret the term *enterprise* as equivalent or synonymous with *mercantile corporation*. In fact, the first paragraph of article 25 of the Foreign Investment Law establishes that "[S]ecurities representing capital of business enterprises shall be nominal."²³

It is important to point out that even when a corporation, company or partnership is a Mexican firm, if 50% of its capital is foreign owned, the investments made by the same will be considered a foreign investment. Likewise, when the foreign participation in capital is less

21. García Padilla, *La Personalidad Jurídica y las Unidades Económicas*, Investigación Fiscal (Dec. 1971), at 26, 27.

22. See Pereznieto, *Comentarios a la Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera*, El Foro, Apr.-June 1973. Because of the ambiguous nature of the language composing the regulations, it may be said that the legislature attempted to extend, not to limit, the classes of those allowed to invest in Mexico. *Id.* at 50.

23. Foreign Investment Law, *supra* note 5, at 648.

than 50%, but both the effective management and direction of the company is deemed in foreign hands, this will also be considered as a foreign enterprise in the investment it might effect.

The foreign majority capital holdings will be determined through two different channels: by the name in which the stock certificates must be issued, and by the required inscription in the National Registry of Foreign Investments.²⁴ Insofar as the direction of the company is concerned, later in section 4, I will refer to what the Mexican law in the matter of Mercantile Partnerships, Companies and Corporations understands to be the directive or administrative organs of such entities. The term "management" of companies is, again, a term not to be found in Mexican law. Its connotation, however, in the Spanish language implies, among other things, the direction and government of a business.

E. *Foreign investment in the capital, purchase of property or transactions of a company*

This criterion is understood to be complementary of the concept of the law in the matter of foreign investment. In this case, the amount of the investment appears to be of no importance since this is determined by the National Registry of Foreign Investments.

IV. SOME CHARACTERISTICS OF THE CORPORATION IN MEXICAN LAW

In this section, I will very briefly refer to the corporation in the Mexican law, because it is through this type of mercantile association that the major part of private investments are done in Mexico.²⁵ The General Law of Mercantile Partnerships and Corporations (Federal)²⁶ provides that "a joint stock company (corporation) is that which operates under a company name and is formed exclusively by stockholders whose liability is limited to paying for their shares."²⁷ In order to constitute such a company there must be at least five stockholders, each of whom must hold at least one share; the share capital must not be less

24. *Id.* art. 23. The National Registry of Foreign Investments was created under articles 23 and 24.

25. See R. MOLINA, *DERECHO MERCANTIL* (1973). Among the several possible types of business associations, corporations, until 1970, constituted 98% of the total of juristic persons organized in Mexico. *Id.* at 323.

26. D.O., Aug. 4, 1943. LISR, *supra* note 18.

27. See LISR, *supra* note 18, art. 87.

that 25,000 pesos (one thousand dollars), and must be fully subscribed; at least 20% of the value of each share payable in money must be paid up in cash; and the value of each share payable partially or totally in specie must be fully paid up.²⁸ In the same manner, the incorporation requires the intervention of a notary public in the act of constitution of the corporate entity, or alternatively, that the capital be levied by public subscription.²⁹ The general stockholders assembly is the supreme organ of the corporation.³⁰ The administration of the corporation will be in charge of one or several temporary and revocable mandataries who may be stockholders or persons alien to the corporation.³¹ When there are two or more administrators, they shall constitute a Board of Directors.³²

The general stockholders assembly, the Board of Directors or the administrator, as the case may be, may name one or several General or Special Managers, who may or may not be stockholders of the corporation. The designation of managers is revocable at any given moment by the administrator, the Board of Directors or by the general stockholders assembly.³³

As for the capital stocks, the law establishes that they are the parts into which the shareholders' equity is divided and will be represented by certificates that will serve to grant and transmit the quality and rights of a partner, to their lawful holders. These certificates are subject to the disposition concerning security or credit instruments.³⁴

The stock certificates will be of equal value and will confer equal rights.³⁵ In spite of the fact that the stock certificates may be issued nominatively to the bearer, article 25, section II of the Law of Foreign Investment states that "bearer stock certificates may not be purchased by foreigners without prior approval of the National Committee of Foreign Investments, in which case the certificates would become

28. *Id.* art. 89.

29. *Id.* art. 90. In a public subscription, a draft of the proposed charter or by-laws must be deposited in the Public Registry of Commerce. It must contain, *inter alia*, par value or stated value, nature or classification of stock, the purpose of the company, duration, and domicile of the company. GARTHER, *supra* note 12, at 23.

30. LISR, *supra* note 18, art. 178.

31. *Id.* art. 142.

32. *Id.* art. 143.

33. *Id.* art. 145.

34. *Id.* art. 111.

35. *Id.* art. 112. This provision goes on to provide that "the deed of incorporation may, nevertheless, stipulate that the capital be represented by more than one kind of shares, each kind having special rights, but the provisions of article 17 shall be observed in all cases." *Id.* Article 17 gives no legal effect to stipulations that "exclude one or more associates from participation in the profits." *Id.*

nominative."³⁶

V. PERMITS FOR FOREIGN INVESTORS

The following permits are those mainly required:

- (a) When foreign individuals or corporations (juristic persons) wish to acquire ownership of land or water, permission must be requested from the Ministry of Foreign Affairs although neither purchase nor acquisition of property may be within the "forbidden zone." To this effect, article 27, section 1, paragraph 2 of the Constitution (Federal) establishes that "[w]ithin a one-hundred kilometer strip along coastal zones, no foreigner may acquire direct ownership of land or water."³⁷
- (b) Foreign investors will also require authorization from the appropriate Secretary of State according to the field of economic activity involved, when they wish to acquire more than 25% of the capital of a business enterprise, or more than 49% of its fixed assets. This same authorization is required to lease business enterprises or the assets deemed essential for a given type of business exploitation. The same applies to foreign investors executing acts through which they undertake the administration of a firm, or such acts that will result in their being able to determine the enterprise's management.³⁸
- (c) Foreign investors will also require permission from the Ministry of Foreign Affairs, for the purchase of property (outside of the forbidden zone), as well as for the constitution and modification of a company, partnership or corporation by-laws.³⁹

36. Foreign Investment Law, ch. 6, art. 25, § 11, *supra* note 5, at 648.

37. MEX. CONST., *supra* note 4, art. 27, para. 1.

38. Foreign Investment Law, art. 8, *supra* note 5, at 649.

39. *Id.* art. 170.

- (d) Foreign investors must also obtain the approval of the National Committee of Foreign Investments to acquire bearer stock certificates.⁴⁰

VI. TRUSTS ON REAL ESTATE LOCATED ON BORDER AND COASTAL ZONES

The restriction contained in article 27, section I, paragraph 2 of the Constitution⁴¹ referring to foreigners in the acquisition of property within the "forbidden zone," has been interpreted⁴² in such a manner that whereas foreigners may not acquire the ownership rights, they can acquire other rights involving the temporary use or possession of this property.

Under these conditions, the Foreign Investment Law,⁴³ establishes the pertaining regulations so that by means of a trust, any Mexican credit institution obtaining a prior permit issued by the Ministry of Foreign Affairs, may acquire property in trust within the "forbidden zone." In this case, the foreign investors would be the trust beneficiaries. It is noteworthy to underscore the fact that this trust modality contains certain peculiar characteristics, such as the following:

- (a) Its maximum duration is thirty years.
- (b) The property participation certificates issued by the trustee (Bank) to the beneficiaries only allot the right to "a proportional part of the profits or earnings of the securities, rights or properties of any kind held in irrevocable trust for that purpose by the trust company issuing them,"⁴⁴ or "the right to a proportional part of the net income

40. *Id.* art. 25.

41. MEX. CONST., *supra* note 4, art. 27, § 1, para. 2.

42. See Molina Pasquel, *El Fideicomiso de Inmuebles en las Zonas Prohibidas en Favor de Extranjeros*, El Foro, Jan.-Mar. 1954. In order to promote economic development in Mexico, it has been necessary to encourage the development of the forbidden zone by nationals in association with foreigners. Ex-President Lázaro Cardenas, in order to promote this growth, interpreted the Mexican Constitution, article 27, § 1, para. 2 as allowing some indirect control by foreigners of the land located in the forbidden zone. *Id.* at 29-58.

43. Foreign Investment Law, ch. 4, art. 18, *supra* note 5, at 647.

44. Law of Negotiable Instruments and Credit Operation, arts. 228-29, D.O., Aug. 27, 1932 and decree of Dec. 31, 1946, D.O., Dec. 31, 1946.

from the sale of those properties, rights or securities,"⁴⁵ and "for the benefit of the holders of immovable participation certificates the issuing concern may set up, . . . a right to the direct utilization of the immovable property in trust, the amount, reach and conditions of which shall be specified in the record of the corresponding issue."⁴⁶ This applies in all cases and excludes any equal part in the direct ownership of the real estate involved.

- (c) The property participating certificates will be nominative and non-redeemable.⁴⁷

VII. REGULATION TO THE LAW

The Law was published on February 16, 1973 and the Regulation to the Law, on December 28, 1973.⁴⁸ In the Regulation, different aspects of the Law are specified and developed, these being: organization of the National Registry of Foreign Investments and the procedure for carrying out registrations of foreign investments. All of this constitutes a process of an internal nature that only has interest for Mexican lawyers who have to carry it out. Nevertheless, there are two Titles (VI and VII)⁴⁹ in the Regulation relating to corporations whose stocks are negotiated on the Mexican Stock Exchange and, most importantly to cases where stocks are negotiated abroad. In the first instance, for a corporation whose stocks are negotiated on the Mexican Stock Ex-

45. *Id.* art. 228(a)-(c). In the case of subparagraph c, the total right of the holders of certificates of each issue shall be equal to the percentage represented by the total nominal value of the issue at the time it is made, in relation to the commercial value of the corresponding properties, rights or securities fixed by an expert's examination as provided for in article 228(h). *Id.* art. 228(a). Article 228(h) provides:

The total nominal value of an issue of participation certificate shall be fixed in a report drawn by the "National Financia, S.A." or by the National Urban Mortgage and Public Works Bank, depending on whether the properties in question are movable or immovable, after obtaining an expert's report upon the properties in trust covered by that issue.

46. *Id.* art. 228(e).

47. Foreign Investment Law, ch. 4, art. 21 para. b, *supra* note 5, at 648.

48. D.O., March 9, 1973, *reprinted in* 8 CAL. W. INT'L L.J. 60, 61 (1978).

49. Regulation of the National Registry of Foreign Investments, Dec. 11, 1973, D.O., Dec. 28, 1973, *reprinted in*, 1 MULTINATIONAL CORPORATIONS LAW B.2, 13 (M. Gordon ed. 1981) [hereinafter cited as Gordon].

change, the Regulation provides that in the event stocks are acquired by foreign investors, the investors must apply for enrollment in the Registry within the month following the purchase date, except when the stocks purchased represent only 5% of the corporation's capital stock, in which case, the time limit is three months. So long as enrollment has not been applied for, the stockholders may not be present at any stockholders assembly. In the second case, regarding stocks negotiated abroad, the Regulation establishes the following requirements:

- (a) The Mexican corporation must prove to the Registry that its stocks are enrolled in a stock exchange outside the country, or that they are the object of a transaction abroad with the intervention of brokers, exchange houses, or credit institutions.⁵⁰
- (b) The Regulation presupposes that the stocks are in the conditions stated in the above paragraph if the issuing corporation verifies it has made dividend payments through credit institutions or agents established abroad.⁵¹
- (c) The Commission on Foreign Investments may authorize, in a general way, the purchase of a Mexican corporation's stocks by foreign investors, but said stocks still have to be nominative or be converted to nominative stocks.⁵²
- (d) The Mexican issuing corporation authorized to negotiate stocks abroad must supply the Registry with the identifying data of the stocks negotiated abroad. With this, the corporation will be allowed to pay the dividends corresponding to the stocks purchased, but the owners of the stocks may not exercise any right conferred on them by the stocks except for that mentioned, of receiving dividends until the Commission has specifically authorized the purchase and the foreign investor is enrolled in the Registry.⁵³

50. *Id.* ch. 7, art. 40.

51. *Id.* art. 41.

52. *Id.* art. 42.

53. *Id.* This poses an important practical problem, in that if the amount of the stocks negotiable abroad and acquired by foreigners is greater than 25% of the corpora-

- (e) Finally, the Regulation establishes a time limit of one month in order to apply for enrollment. This time limit begins to run from the date on which the investor is notified of the authorization accorded him.⁵⁴

VIII. GENERAL RESOLUTIONS

To conclude this overview, I will mention very briefly another practical aspect that is very important in the field of foreign investments in Mexico: the General Resolutions issued by the Commission; for they represent the criteria for application of the Law and its Regulation. There are currently sixteen General Resolutions⁵⁵ on a wide range of topics. Due to the length of this work, I will refer to only some of them, and in a condensed fashion.

(a) *General Resolution number 3*

This resolution empowers the Secretary of the Commission on Foreign Investments (the "Commission") to authorize the acquisition of stocks by foreigners if said acquisition is performed on the stock exchange and the stocks to be acquired do not exceed 5% of the corporation's capital stock. It is worth noting that the faculties granted the Commission's Secretary to decide, imply that the Secretary will not necessarily have to submit this type of matter to the Commission, meaning that the procedure is expedited.⁵⁶

(b) *General Resolution number 4*

This resolution authorizes re-election of foreign members in a Board of Directors, provided their participation on the Board does not exceed their percentage of participation in the company's capital stock.⁵⁷

(c) *General Resolution number 8*

This resolution puts special importance on the measure that requires prior authorization of the foreign investment to be made in the

tion's capital stock shares, a Mexican stock corporation that must meet with three quarters of the capital in a special assembly, cannot do so until the specific authorization requisite and enrollment in the Registry have been complied with.

54. *Id.* art. 46.

55. See notes 56-60 *infra*. All the Resolutions are reprinted in Gordon, *supra* note 49, at 29-60.

56. General Resolutions of the National Commission of Foreign Investment 1-10, Oct. 24, 1975, D.O., Nov. 5, 1975. Resolution Number 3, Acquisition of Bearer Shares in Stock Markets, reprinted in Gordon, *supra* note 49, at 31.

57. Resolution Number 4, Reelection of Foreign Members of a Board of Directors, reprinted in Gordon, *supra* note 49, at 31.

opening of a "new establishment," as well as of the relocation of any of the establishments of a corporation. For the resolution's purposes, a "new establishment" is understood to be "[a]ny technical unit or any physical place, independently distinct or different from those existing in a corporation and also in those where the corporation intends to perform an industrial, commercial or service rendering activity."⁵⁸

In practice, the Commission takes the following criterion into account in order to grant this type of authorization: when a corporation is involved which has one hundred percent foreign capital or a majority of foreign capital, the corporation will necessarily have to perform activities in the "new establishments" that effectively benefit the national economy and do not involve merely simple expansions of a commercial nature. That is, they must be important industrial or service activities. Based on this criterion, the Commission attempts to limit the expansion of this type of corporation when said expansion is only of a strictly commercial nature. Furthermore, I consider it an indirect way for these corporations to achieve Mexicanization of part of their capital.

(d) *General Resolution number 13*

This resolution empowers the Commission's Secretary to rule on the transfer of stocks or assets between foreign investors belonging to one single "interest group." It also establishes a mechanism for expediting this procedure.⁵⁹ According to this resolution, transfer of stock or assets within the same "interest group" is understood to be when the transfer is done in the following cases:

from one foreign corporation to another, when one is owned by the other; when the transfer is carried out between foreign corporations, but both the transferring company and the purchaser are owned by a third foreign corporation; when the transfer is made from one foreign corporation to one or several of its main officials or vice versa; when the transfer is effected between foreign individuals with a straight line blood kinship in an indefinite degree and in a collateral line up to the fourth degree.

(e) *General Resolution number 16*

58. Resolution Number 8, New Establishments, *reprinted in* Gordon, *supra* note 49, at 33.

59. General Resolution Number 13, as amended in meeting number 80 of Nov. 15, 1979, D.O., March 4, 1980, *reprinted in* Gordon, *supra* note 49, at 51.

This gives special importance to the measure governing new fields of activity and new product lines in which any foreign investment is to be made.⁶⁰ The resolution establishes the need for authorization of any foreign investment that is desired in "new fields of economic activity," which is any activity different from that which a corporation has in fact performed as of when it acquired the character of foreign investor, or that tends to satisfy the needs of a different market.

In accordance with the resolution, "new product line" is understood to be any product or group of products different from those that an established corporation has in fact produced or manufactured as of when it acquired the character of foreign investor, or which tends to satisfy the needs of a different market or consumer sector, or when any product or line of products is involved that is not found within the classes a corporation operates in or included in the classification the same resolution establishes.

In practice, as can be seen, authorization concerning new fields of economic activity and particularly new product lines is of vital importance for corporations that wish to be able to continue expanding. To this end, the Commission analyzes the corresponding authorizations in great detail so that both the new fields of economic activity that are authorized and the new product lines will be of real importance to Mexico's economy.

IX. CONCLUSION

In conclusion, and in light of the foregoing, we can see how a legal system such as Mexico's in the specific area of foreign investment has had to continue developing and defining itself, as well as having to establish mechanisms for regulating this type of activity. This is due to the fact that Mexico, because of its political stability, rapid industrial development, and factors such as vast oil reserves, make it a highly attractive country for foreign investment. This in turn, has led to an enormous increase in foreign investment in the last twenty years.

60. General Resolution Number 16, New Fields of Economic Activity and New Lines of Products, Aug. 1977, D.O., Sept. 6, 1977, reprinted in Gordon, *supra* note 49, at 56.

