



## A Brief Guide to Investment in Mexico

### **Key Points of Consideration - Mexico**

#### **1). Are there any restrictions on foreign investment, and in particular, British investment?**

Yes, there are certain barriers to foreign investment which should always be taken into consideration. These barriers, however, do not relate to the nationality of the investment, but to the nature of the activity performed by foreigners in Mexico.

These barriers exist in the following activities:

- a) Activities reserved exclusively for the Mexican Government to perform.
- b) Activities reserved exclusively for Mexican citizens or companies that internally forbid in its bylaws foreign investment participation.
- c) Activities that require specific authorization by the Mexican Ministry of Economy (through the “Comisión Nacional de Inversión Extranjera”), before the foreign investment is approved.

Besides these barriers, other matters should be taken into consideration when investing in Mexico:

1. Labeling laws
2. Sanitary and phytosanitary laws
3. Technical standards
4. Environmental regulations
5. Quality standards for fruits and vegetables
6. Toxicity regulations
7. Quality standards
8. Customs Requirements (filing documentation, declaring and inspecting cargo, signing entry declaration(s) and payment of importation tax.)

#### **2). In what sectors of the economy are there limitations to foreign investment?**

Foreign investment is currently restricted in the following sectors:

Mexican foreign investment Law of (Ley de Inversión Extranjera) establishes the following sector-specific limitations:

##### **2.1. Reserved Activities (activities reserved exclusively for the Mexican State):**

- a) Exploration and extraction of oil and other hydrocarbons, in accordance with the rules established by the Mexican Constitution, article 27 and its derivative regulation. (In accordance with recent Energy Reform implemented last year and which continues regulatory development, foreign companies will be allowed to

- participate in the oil and hydrocarbon sector in a limited capacity);
- b) Planning and controlling the national electric system, as well as the public transmission and distribution of electric energy, in accordance with the aforementioned article 27 of the Mexican Constitution and article 28 and its derivative regulations. (In accordance with recent Energy Reform implemented last year, which continues regulatory development, foreign companies will be allowed to participate in the electric sector in a limited capacity).
  - c) Generation of nuclear energy
  - d) Radioactive minerals
  - e) Telegraphs
  - f) Radiotelegraphy
  - g) Mail
  - h) Currency Printing
  - i) Minting of money coins
  - j) Control, supervision and surveillance of ports, airports, heliports; and
  - k) Any other activity expressly established in Mexican law.

2.2. Activities reserved exclusively for Mexican citizens or companies with bylaws forbidding foreign investment participation.

- a) National land passenger transportation, touristic and freight, excluding packaging and messaging.
- b) Institutions of Bank development, in accordance with its regulation.
- c) Professional and technical services expressly established in Mexican Law.

Foreign investment is not directly allowed in these activities or in societies that perform these activities, or through trusts, contracts, shareholders agreements, or any pyramid scheme, or any mechanism that grants such control or allows any such kind of participation. The only exception is neutral investment in Mexican societies or trusts in which the Fiduciary Institution has been granted authorization by the Ministry of Economy which gives the foreigner neutral investment titles and bestows upon the title holder only economic rights or limited corporate rights and always excludes the right to vote in General Assemblies.

2.3. Activities that require specific authorization by the Mexican Ministry of Economy (through the “Comisión Nacional de Inversión Extranjera”), before permitting foreign investment).

This authorization is required for a 49% or more foreign investment participation in the economic activities and societies listed below:

- a) Port services for vessels to perform inner navigation operations such as towing, mooring, or freight charging;
- b) Shipping Societies dedicated to the operation of vessels exclusively for outer traffic of vessels (“tráfico de altura”).
- c) Societies that are licensees or concessionaires of public airports.
- d) Private education services in the following levels either separate or combined: “pre-school, primary, secondary, polytechnical colleges”.
- e) Legal services
- f) Construction, operation and exploitation of railways that are considered a communications viaduct in tandem with a public railway service.



### **3). Are there programs or other legal, tax or social schemes, in order to encourage foreign invest and, in particular, British investment?**

Mexico has implemented several measures to promote foreign investment generally and in particular from the United Kingdom.

Some of the most important incentives are the following:

3.1. Clawback: this incentive offers the possibility of obtaining clawback of importation taxes (Impuesto General de Importación) for chattels that have been incorporated to export merchandise.

3.2. IMMEX: The IMMEX program allows temporary import of goods required for an industrial process or service, used in the elaboration, transformation or repair of foreign merchandize that was temporarily imported for later export or used in export services, without paying general importation tax, VAT and, if applicable, compensation fees.

3.3. PROSEC: The sector promotion programs are directed at companies that produce certain merchandise and through this program are allowed to import certain goods used in the production of specific merchandise by paying a preferred ad-valorem customs duty (Impuesto General de Importación) and without taking into consideration whether the merchandise will be exported or not.

3.4. NEEC: The new program of Certified Companies (NEEC) is a program aimed towards increasing the strength of the logistic chain of external trade through the implementation of international standards of security. This program grants benefits to the participating companies.

3.5. FISCAL BENEFITS:

3.5.1. Tax Immediate deduction: this deduction can be applied to encourage investment throughout the country, except in the metropolitan areas surrounding Mexico City (D.F.), Monterrey and Guadalajara. Nevertheless, this deduction is applicable only for projects that require intensive workforce, do not pollute, and do not require intensive use of water.

3.5.2. Federal tax incentive, applicable for companies that do not have an established presence in Mexico. The assembly companies that are eligible (now IMMEX) under certain conditions are granted an income tax reduction.

3.5.3. Fiscal Credits for Federal Taxes in Research and Development: The eligible companies can receive a fiscal credit and/or tax credit of 30% of the total Research and Development expenditure (I+D) including process and design.

3.6. Programs to encourage innovation: these programs assist companies that invest in research projects, development of technology and innovation aimed at the development of new products, process or services.

3.7. International Fund: The International Cooperation Fund promotes scientific and technological research between Mexico and the European Union that supports projects under the following categories: projects of joint investigation, creation and strengthening of research nets. Additional incentives are granted by CONACYT (National Council of Science and Technology).



**4). Are there any government agreements that protect the interests of British investors?**

Mexico and the United Kingdom signed the following treaty: “Agreement between the UK and Mexico for the Promotion and Reciprocal Protection of Investments”

The main purpose of this treaty is to significantly increase bilateral investment flows. The Contracting Parties may elaborate investment promotion documents and may provide each other with detailed information regarding: (a) investment opportunities; (b) the laws, regulations or provisions that, directly or indirectly, affect foreign investment including, among others, currency exchange and fiscal regimes; (c) foreign investment statistics in their respective territories.

This treaty also establishes among other points, rules for: a) Minimum Standard of Treatment in Accordance with Customary International Law; b) National Treatment and Most-Favoured-Nation Treatment; c) Investment Support; d) Dispute Settlement; e) Final Award and Enforcement of an Award; and f) Interim Measures of Protection;

**5.) Are there any trade agreements signed with the United Kingdom?**

Mexico’s commercial treaties with the United Kingdom, have mainly been effected through the European Union (EU). For example, the Economic Partnership Political Coordination and Cooperation Agreement (also known as the Global Agreement), which was the first transatlantic Free Trade Agreement for the EU. The motivations for this agreement were to expand market access for exports from the EU to Mexico and attract more FDI from the EU to Mexico. Another example is the agreement between Mexico and the European Union on a “strategic association” to further advance trade liberalization and to address climate change issues.

The said agreement includes provisions on national treatment and market access for goods and services; government procurement; IPR; investment; financial services; standards; telecommunications and information services; agriculture; dispute settlement; and other provisions. The agreement also includes chapters in which the parties agree to increase cooperation in a number of areas, including mining, energy, transportation, tourism, statistics, science and technology, environment, and other areas. On industrial goods, the EU agreed to eliminate tariffs on 82% of imports (by value) coming from Mexico and to phase out remaining tariffs by January 1, 2003. Mexico agreed to eliminate tariffs on 47% of imports by value from the EU and to phase out the remaining tariffs by January 1, 2007. In agricultural products and fisheries, signatories agreed to phase out tariffs on 62% of trade within ten years. Tariff negotiations were deferred on certain sensitive products, including meat, dairy products, cereals, and bananas. Most non-tariff barriers, such as quotas and import/export licenses, were removed upon implementation of the agreement. Mexico agreed to phase out import restrictions of new automobiles from the EU by 2007. In government procurement, Mexico agreed to follow provisions similar to those under NAFTA to allow the EU to enter the Mexican market and the EU agreed to follow WTO rules.

**6.) Is it necessary that the investor has a permanent establishment in the destination country to develop his business?**



No, it is not necessary, the activity can be indirectly developed through an independent agent, acting in the regular course of his business, however, under Mexican Law it's very easy to determine the existence of a permanent establishment. This term is defined under income tax law (Ley del Impuesto sobre la Renta) which refers to any business location where business activities are partially or totally developed or business activities or personal services are conducted. A permanent establishment in accordance to Mexican law can be a subsidiary, an agency, an office, a plant, a shop, or any facility where exploration, extraction or exploitation of natural resources is performed.

Furthermore, Mexican law establishes that when a foreign resident acts in Mexico through a physical person or legal entity that is not an independent agent the foreign resident is considered to have a permanent establishment in Mexico in relation to all activities such person or entity performs for the foreign resident. Even if the foreign resident does not have a place of business in Mexico, if such person exercises a power of attorney to execute contracts in the foreign resident's name aimed towards the performance of activities of the foreign resident there shall be deemed a permanent establishment.

Where a foreign resident performs business activities in Mexico through a trust, the place where the fiduciary performs the business activities or complies with tax obligations generated by such activities shall be deemed the place of business of the foreign resident.

A foreign resident shall also be deemed to have a permanent establishment when he acts in Mexico through a physical person or legal entity that is considered an independent agent if such agent does not act inside the regular scope of his activity. It shall be considered that an agent does not act inside the regular scope of his activity whenever he falls in the following scenarios:

i) If he has goods or merchandise with which he performs deliveries on behalf of the foreign resident; ii) If he takes over or accepts risks that belong to the foreign resident; iii) If he acts following detailed instructions, or under the general control of the foreign resident; iv) If he performs economic activities that correspond to the foreign resident and not to his own activities; v) If he receives compensation independently of the result of his activities; vi) If he performs with the foreign resident operations using prices or compensations that would not be used under the same circumstances by non related parties.

In relation with the services of construction, demolition, facilities, maintenance, or assemblies in real estate, or by activities of projects, inspection, or surveillance related with such services, there shall be deemed a permanent establishment when such services last more than 183 natural days, (consecutive or not) in a 12 month period.

In such a case, when the foreign resident subcontracts with companies offering the aforementioned services, the days used by the subcontractor in the development of such activities shall be added to the period described in the previous point.

The income obtained by the central office of the company or any of its establishments abroad shall be deemed income of the permanent establishment in the ratio in which such permanent establishment participated in the expenses incurred to obtain the income.

**7.) Is it necessary for a foreign investor to establish a residence in the destination country for the purposes of managing investments?** No, it's



not necessary for the foreign investor to establish residence in Mexico, in order for him to administer its investment.

### **8.) What are the different types of company formation?**

Mexican legislation includes a wide variety of legal entities that can be created to establish a company, however, certain entities are more popular and others remain a subject of study more than a real formula to establish a company.

The existing types are the following:

I.- Sociedad en nombre colectivo;

II.- Sociedad en comandita simple;

III.- Sociedad de responsabilidad limitada;

IV.- Sociedad anónima; These types of legal entities are subject to changes in accordance with: i) market value legislation, for example the “Sociedad Anónima” can evolve into a more complex figure called “Sociedad Anónima Promotora de Inversión” which is a legal entity that promotes investment and is particularly useful for (i) venture capital projects; and (ii) future transitions to publicly traded companies (Sociedad Anónima Bursátil); ii) financial legislation, for example the “Sociedad Financiera de Objeto Múltiple”, which is a type of Sociedad Anónima whose main activity will be granting credits, leasing and financial factoring.)

V.- Sociedad en comandita por acciones, y

VI.- Sociedad cooperativa.

(These two legal entities can also have a feature called “Capital Variable”, which allows the company to increase or decrease capital in a simplified way.)

VII.- Sociedad Civil

VIII. Asociación Civil

IX. Instituciones Financieras (Instituciones de banca múltiple e Instituciones de banca de desarrollo).

X. Sociedades Rurales (Uniones de Ejidos, Asociaciones Rurales de Interés Colectivo, Sociedades de Producción Rural bajo el régimen de responsabilidad ilimitada, limitada o suplementada).

XI. Sociedades de Inversión

XII. Sociedades del Sector de Ahorro y Crédito Popular (sociedades cooperativas de Ahorro y Préstamo; Sociedades Financieras Populares; Sociedades Financieras Comunitarias).

XIII. Oficinas de Representación y Sucursales de Sociedades Extranjeras.

XII. Fideicomiso

XIII. Contratos Mercantiles innominados. (Contrato de colaboración, joint venture).

XIV. Asociación en Participación.

XV. Consorcio para contratación pública.

### **9.) What is the most common company formation?**

The most common formula used in Mexico is the establishment of a Sociedad Anónima with the Capital Variable feature (S.A. de C.V.), however, the trust (fideicomiso) is a very versatile institution that allows differing investment formulas in Mexico.

### **10) Are there minimum capital requirements?**



Historically the minimum share capital was \$50,000.00 (fifty thousand pesos), however, legislation has changed and the limit has been reduced to \$2.00 (two pesos) for the most common investment vehicle (Sociedad Anónima), nevertheless in practice people often consider \$50,000.00 the limit, even though it's not mandatory.

**11.) Is it necessary to have a local partner to establish a company?**

No, it's not necessary, however, for regulated activities where an over 49% foreign investment participation authorisation is required it could be an alternative to filing the authorisation request before the Ministry of Economy.

**12.) Is a resident of the destination country required in order to manage the investment?**

No, it's not necessary to have a national or a resident administering the investment, it can be performed by a foreigner.

**13.) Are there mechanisms to protect minority shareholders in a trading company?**

Yes, and depending of the type of legal entity or formula that is used to establish the foreign investment, the mechanisms can change.

For example the "Sociedad Anónima Promotora de Inversión" (SAPI) has stronger mechanisms, for example "tag along, and drag along rights" and the "Sociedad de Responsabilidad Limitada" and even the very common Sociedad Anónima, have fewer protection mechanisms, for example the holder of 25% of the equity can appoint a director to the board.

**14.) Are there mechanisms to protect against insolvency situations? Are the partners and/or the directors personally liable in the event case of the insolvency of the company?**

According to Mexican law, certain legal entities have limited liability and others don't. For example the Sociedad Anónima have limited liability but on the other hand, the "Sociedad en Nombre Colectivo" shares liability with its members.

**15.) What is the estimated cost and how long does the formation and incorporation of a company take?**

According to the new on-line system and program (TU EMPRESA) created by the Mexican government it is possible in theory to have a company completely incorporated and functional in one day, however, in practice it usually takes one week, and for some types of companies it can take up to two months.

The costs for incorporating a company will depend on its equity but in general terms with the usual equity of \$50,000.00 (fifty thousand pesos) the costs including lawyer's fees and the usual registrations will range between USD\$4500.00 – USD\$5500.00.

**16.) What other formalities ought to be undertaken when a making foreign investment in Mexico?**

To incorporate a legal entity in Mexico the preliminary steps will depend on the nature of the chosen legal entity and the activities it will perform. For explanation purposes we divide the preliminary steps as follows:



16.1. No need for preliminary steps: in most investment scenarios there will be no need to perform any preliminary action, hence the constitution can be done in a single act.

16.2. Simple preliminary steps: if the legal entity is to be a Representative office or Commercial branch office (sucursal), it will require be required to notify the Ministry of Economy that it will not perform a regulated activity.

16.3. Complex preliminary steps: legal entities with foreign investment above 49% total equity performing any regulated activities will require prior authorisation from the Ministry of Economy. This authorisation requires the filing of a complex plan that will explain the investment project and the advantages it will bring to Mexico.

16.4. Optional preliminary steps: sometimes investors grant a local representative (lawyer or trusted person) power of attorney to sign the required documentation and contracts in their name and they remain in their country of residence.

**17.) Are documents issued by the UK valid?**

Official documents of the United Kingdom will be recognized as valid in Mexico if they have the apostille in accordance to the Hague Convention of 1961 and if they have been translated to Spanish by a certified translator. (Certified translators in Mexico are registered in court).

**18.) Are there restrictions upon transferring capital and currencies? Is exchange insurance available or are there alternative ways to protect the fluctuation risks?**

No, unlike other countries in Latin America, such as Argentina or Venezuela, there are no currency exchange restrictions.

To prevent the risk of currency fluctuation it is possible to acquire insurance in Mexico or abroad that protects or secures the currency exchange rate.

**19.) What kind of guarantees are most common?**

The grant of security in Mexico will definitely depend on the nature of the project, however the most used are the following:

1. Real Estate: it is still common practice in Mexico to ask for a mortgage, or simply to diligence economic solvency by proving real estate ownership.
2. Financial instruments or credit titles: the “Fianza”, “letra de cambio” and the “pagaré” are usually the favorite warranties because they can be used directly in a short trial to prove only the valid execution of documents, without requiring a long standard trial where the judge needs to study the case.
3. Shares or assets: it is also common practice in Mexico to pawn and take security over shares of a company or assets.
4. Trust (Fideicomiso): for more complex projects, the Mexican trust or “Fideicomiso” is probably the most trusted security mechanism in Mexico, since the Fiduciary, is a bank or financial institution it gives the involved parties, an additional security that their interests will be safeguarded by a transparent and professional third party.

**20.) What taxes should a company regularly declare?**

The taxes a Mexican company needs to declare are the following:

- a) Monthly ISR (Income Tax) at an annual rate of 30%.
- b) Monthly IVA (Value Added Tax), the general rate is 16%.

- c) Withholding tax (Income Tax) to salaries, compensations, transport payments, profit distribution, etc., however, these payments are made as a withholding duty and not as the company's own tax.

**21.) What taxes should a branch regularly declare?**

The same taxes as for a domestic company, which are referred in the previous answer.

**22.) What are the main current tax rates a company must declare?**

- a) Monthly ISR (Income Tax) at an annual rate of 30%.
- b) Monthly IVA (Value Added Tax) the general rate is 16%.

**23.) What are the main current tax rates a branch must declare?**

Exactly the same as referred to in the previous question.

**24.) Are there any agreements with the UK in order to avoid double taxation?**

The Treaties have been signed independently with Ireland, Isle of Man and the United Kingdom.

**25.) Is the return of capital taxed?**

No, in general terms as noted in question 18 unlike countries such as Argentina or Venezuela, there are no currency exchange restrictions. However, if the specific operation represents a refund of capital, the specific operation should be studied, because capital refunds are not taxed unless capitalized dividends are included.

**26.) Do particular regions offer more favourable tax advantages for investments?**

Yes, there are certain areas in Mexico near the borders where a different type of tax is paid to allow the assembly of merchandise and exportation or to allow fair competition with the neighboring countries, specifically along the United States border.

**27.) What type of employment contracts are there?**

According to Mexican labor law ("Ley Federal del Trabajo"), employment agreements can be established for i) specific work; ii) a specific period of time; iii) a season; and iv) an indeterminate period of time. All employment agreements can be subject to a probation period or initial training.

It is important to note that besides the specific labor relations established in law, it is possible to establish "work" relations through outsourcing companies and through commercial contracts in specific cases and with certain contingencies that should be investigated on a case-by-case basis.

**28.) Is there an obligation to employ locals from the country of destination? Is the hiring of workers free?**

Mexican labor law establishes that all companies shall hire at least 90% Mexican workers. In the categories of technicians and professionals, the employees shall be



Mexicans unless none can be found in that given specialty, in which case the company will be allowed to temporarily hire up to 10% foreign employees.

The company and the foreign employees will be obliged to train domestic employees. Doctors at the service of companies shall be Mexican.

The aforementioned limitations shall not apply to directors, administrators and general managers.

These limits are sometimes hard to enforce in practice, however, it is important to keep them in mind especially in certain scenarios, for example, when establishing a company that will conduct regulated activities, the Ministry of Economy will take into consideration the amount of employments the company will generate in the country before giving the necessary authorisation, therefore compliance with these ratios when presenting the investment project will be of great importance.

**29.) Can a foreign company with no presence in the country hire locals in order to develop their activity in that country?**

No, Mexican law forbids a foreign company without presence in Mexico to hire Mexican domestic personnel, unless it is an independent agent acting within the scope of its regular activities, otherwise there will be a deemed permanent establishment in accordance to Mexican tax law.

A company that is interested in hiring personnel in Mexico should first:

- i) Establish a legal entity in Mexico.
- ii) Obtain the proper inscription before the Registry of Commerce.
- iii) Obtain the proper inscription before the Mexican tax authorities.
- iv) Obtain the proper inscription before the Registry of Foreign Investment.
- v) Obtain the proper inscription before the Social Security authority.
- vi) And where an employee is a foreigner, it shall obtain the proper inscription before the Institute of Migration to be able to hire foreigners in Mexico.

**30.) Is there a special scheme for foreign employees?**

Not in accordance with labor law, however, it is necessary for the Company to have a previous authorization or inscription from the Institute of Migration that allows it to hire foreigners and the employee must have a corresponding work permit, issued by the same authority.

**31.) What is the applicable scheme for independent professionals hired by a foreign investor?**

They shall receive only the accorded compensation and no additional employment benefits, such as social security, retirement payment, paid holidays, holiday bonus, Christmas payment (Aguinaldo), profit distribution, or any indemnity upon termination either by dismissal or resignation. However, since the authorities and Mexican labor law is extremely protective of employees, it is very important to ensure any independent contractor does not fall into the classification of regular employee or the company could be forced to retroactively pay the additional employment benefits.

**32.) Is there a minimum wage? How is it regulated?**

Yes, Mexican labor law prescribes a minimum salary, which is established every year and is divided in accordance with two geographic areas of the country (Area A and



Area B). The minimum wage in Area A is slightly higher than for Area B. For 2015, the minimum general salary for Area A is \$70.10 pesos and for Area B is \$66.45. Additionally a list of minimum salaries is prescribed for different professions in both areas, for example: Construction worker for Area A is \$102.20 Mexican pesos and for Area B \$96.85 Mexican pesos.

**33.) Is there a National Health Service or similar?**

Yes, Mexico has a Social Security System that is operated by the “Instituto Mexicano del Seguro Social” (IMSS). In accordance with the Mexican Constitution, this Institute is responsible for providing healthcare, medical assistance, protection of means of subsistence and the necessary social services to ensure individual and collective wellbeing.

Additionally a retirement institution exists in Mexico, which is called “Comisión Nacional del Sistema de Ahorro para el Retiro” (CONSAR), which is in charge of regulating the Retirement System in Mexico in which several entities participate to provide relevant service.

**34.) What are the main labour costs?**

Besides the salary, Social security shall be paid (9% of the remuneration), life insurance (depends on the insurance policy) and the Retirement System (13% of the remuneration).

**35.) What activities are subjected to the prior granting of a visa?**

A Visa will be required for British Nationals in Mexico for the following cases:

1. Tourist: British nationals are exempt from the requirement to obtain a visa and are allowed to stay in the country for up to 180 days.
2. Technical: British nationals who are going to undertake “Non-Remunerated Activities” in Mexico for less than six months are exempt from the requirement to obtain a Visa: the beginning or execution of an investment project, to give technical or professional advice to public or private institutions, lectures, courses or training to staff, to perform an audit, repair or install machinery and software, to design or start the operation of a plant agreed previously by contracts, or to give services agreed on contractual assignment of technology, patents or marks. They must simply fill in a FMM migration form (landing card) obtained on the airplane or at the port of entry in Mexico and declare the purpose of their visit.

Where British nationals are going to undertake “Non-Remunerated Activities” for more than six months, their company must request the Consulate to issue a “Temporary Resident Visa” (Residente Temporal). This is a single entry Visa and will allow the applicants to enter the country and exchange it for a Temporary Resident Card within 30 days of arrival at the nearest migration office (INM). The temporary resident card is valid for one year and multiple entries.

3. Business: the same rules that were described for “Technical”, above, are applicable for business.
4. Student
5. University Enrollment
6. Cooperative:



7. Rentista: A foreign national who lives off the income from savings and investments in Mexico or abroad, or any legal income from abroad, such as retirement pensions can apply for a “**Temporary Resident Visa (Residente Temporal)**”. This is a single entry Visa and will allow the applicants to enter the country to exchange it for a Temporary Resident Card within 30 days of arrival at the nearest migration office (INM). The temporary resident card is valid for one year and multiple entries.
8. Film & Photography
9. Voluntary Worker
10. Correspondent
11. Internship
12. Other type of visa:
13. **Work permit for Mexico:** According to Mexican Immigration Law which came into force on 9 November 2012, for foreign nationals who are going to undertake “**Lucrative Activities**” the Mexican company/Institution must request the work permit at the National Migration Institute in Mexico.
14. **Visitor to perform lucrative activities in Mexico:** In the case of visitors entering Mexico to perform lucrative activities, the application for the entry permit is made directly before the National Institute of Immigration by the Mexican party interested in the visit of the foreign national. Foreign artists hired to perform presentations in Mexico as well as foreign nationals hired to work in Mexico request an entry permit from the INM. (the process takes approximately 30 days).

**36.) What types of visas are there?**

Please see previous answer.

**37.) Is a visa needed to establish a company?**

No, it is not necessary as long as the foreigner has his passport and his FMM migration form (landing card).

**38.) What visa should a foreign employee obtain?**

He must obtain the visa known as “Residente Temporal con permiso para trabajo”, which will allow him to remain in Mexico for 2 years and it can be continued for another 2 years.

**39.) What visa should an independent professional obtain?**

He must obtain the same visa described in the previous answer, however, he must declare that he is self-employed and not employed by a third-party company.

**40.) What visa should a foreign investor obtain?**

If he will perform activities that will be paid in Mexican territory he will be considered to be performing remunerated activities, therefore, it is advisable for him to have a work permit for temporary residency.

**41.) What is the average length of time to obtain a visa?**

The period will approximately range from 4 to 8 weeks depending on the nature of the visa required.



**42.) Can foreigners take part in the public procurement processes? Are there any special requirements?**

Foreigners can participate directly in public contracting with the government in two cases First, in case of public contracting where the process is being regulated in accordance with international treaties, and second, when public contracting is openly tendered under the scope of an international open process. These ways of contracting are known as: i) Open International Public Tender, and ii) International Public Tender under the scope of International Treaties.

Save for these two scenarios, foreign investment will need to participate through a Mexican entity and not directly via a foreign entity.

**43.) What are the different methods of contracting with the State?**

Contracting with the Mexican Government implies a wide variety of options, some of which are still evolving, however, the main formulas are the following:

- A.1. Acquisitions, Lease and Services of the Public Sector.
- A.2. Public Work and Services related with the Public Work.

In either area, the government will select one of the following procedures, taking into account the one which provides the best conditions in price, quality, financing, opportunity, and any other pertinent circumstance.

- 1. Public Tender (it can be divided in: i) Open International Public Tender, ii) International Public Tender under the scope of International Treaties and iii) National Public Tender.
- 2. Invitation to at least 3 persons
- 3. Direct allocation

**44.) Is there a special register for authorised companies to contract with the State?**

Yes there are two registries, the first one is called “COMPRANET” and is the telematics system of the administration that allows a company to participate in a contracting process.

The second registry is aimed to keep track of the participation of all the contractors and to grant them additional benefits when they have successfully participated and proven themselves an efficient contractor.

**45.) What guarantees must be provided to the State?**

Every Public Contract is completely different, however, the most common security is based on the laws of acquisition of services and contracting of public deeds and requires the following:

- I. Security over the advanced payments which must be given over the total amount of the anticipated payments, and
- II. The fulfillment of the contract.

**46.) Is a trademark registered in Europe protected in the country of destination?**



No, it is necessary to obtain the local registration certificate by the “Instituto Mexicano de la Propiedad Industrial” (IMPI), however, it is possible to start this procedure in the United Kingdom thorough the “World Intellectual Property Organization” (WIPO or in Mexico OMPI) but the final title must be issued in Mexico by the IMPI.

**47.) Is it possible to protect software?**

Yes, it is possible through the laws that protect authors` rights or copyright. (Ley Federal del Derecho de Autor).

**48.) Can a foreigner purchase real estate? Are there any special requirements?**

Yes, he can acquire real estate, unless it is located in strategic areas, which are the borders of the country with the sea and neighboring countries. In these areas foreigners may acquire through a trust (fideicomiso). However it´s not a risk free operation.

**49.) Can a foreigner rent real estate? Are there any special requirements?**

Yes, he can, however, he needs to have his corresponding inscription before the Mexican tax authority (RFC) and he should provide a receipt with the characteristics required by tax authorities in Mexico, and pay the corresponding taxes for this operation.

**50.) Are the international accounting standards or the local accounting standards applied?**

The applicable accounting laws and principles are locally and legally enforceable laws.

**51.) What mechanisms are there for resolving disputes?**

The most common mechanisms are negotiation, mediation, friendly composition, conciliation, arbitration and the formal legal process in trial.

**52.) Is arbitration a common method for resolving disputes?**

Yes, it is a usual mechanism, that is aimed towards achieving a resolution in a shorter period of time, however, sometimes it can be an expensive mechanism.

**53.) Can judgments/awards from the UK be enforced?**

In principle, all judgments from foreign courts (including UK and US judgments) are enforceable in Mexico.

Judgments between companies are generally characterised as commercial judgments, which are governed by the Mexican Commercial Code. In Mexico, commercial law is federal, meaning the same rules apply throughout the country.

However, before a Mexican court can grant the enforcement of a foreign judgment, the petitioner must prove that the:

- a) Service of process has complied with all the formalities under the international treaties on international procedural co-operation, to which Mexico is a party (see Question 28);
- b) Judgment does not arise from an action in rem (that is, against the thing (as a right, status, or property) and therefore other people generally; imposing a general liability);
- c) Court that rendered the judgment had jurisdiction and there was not a choice of court agreement in favour of Mexican courts;
- d) Defendant was personally served with process;
- e) Decision is final and no further challenge is available (under the principle of res judicata);
- f) Cause of action is not subject to trial before Mexican courts;
- g) Judgment does not breach Mexican public policy;
- h) Judgment is authentic.

If all the above points are satisfied, the court can still deny enforcement on grounds of lack of reciprocity. However, considering that the UK does enforce Mexican judgments, this problem should not arise with UK judgments.

#### **54.) Can judgments/awards from Mexico be enforced in the UK?**

The UK is not party to any international instruments with Mexico for the mutual recognition and enforcement of judgments. Money judgments from Mexico for specified sums may be recognized under the English common law, although this is discretionary and case specific.