

Foreign investors required to obtain prior approval to own more than 49 percent of a new or existing Mexican company must file an application, therefore, with the NCFI. Pursuant to the 1989 Foreign Investment Regulations⁷, the NCFI has 45 business days to issue its ruling from the day it deems the application file to be complete. If the NCFI does not rule within this 45-day period, the application will be deemed approved.

1.3 Acquisition of existing Mexican-owned companies

Under the FIL, a foreign investor may acquire more than 49 percent of the equity of an existing company owned more than 49 percent by Mexican investors, provided that the target company is not engaged in a restricted activity and the total value of the assets of such a company does not exceed certain monetary thresholds established annually by the NCFI. Transitory Article Ten of the FIL established the first annual threshold at N \$85,000,000 pesos (approximately US \$25,000,000). This amount is roughly the threshold that the NAFTA establishes for the acquisition of existing companies in 1994. Under the NAFTA, this threshold, subject to inflationary adjustments, will be increased to US \$50,000,000 in 1997, US \$75,000,000 in 2000 and US \$150,000,000 in 2003. It is expected that the NCFI's annual monetary thresholds for foreign non-NAFTA investors wishing to acquire a Mexican company will follow the general parameters of the NAFTA.

1.4 Branches

Under the FIL, a foreign company must obtain a permit from the *Secretaría de Relaciones Exteriores (SRE)*, Secretariat of Foreign Relations, and approval from the *Secretaría de Comercio y Fomento Industrial (SECOFI)*, Secretariat of Commerce and Industrial Development, to establish and register a branch in Mexico. *SECOFI* must rule on the branch application within 15 business days from the date the complete application is filed. To obtain the permit from the *SRE*, the foreign investor must agree to be deemed a Mexican national with regard to the investment in question. Moreover, the foreign investor agrees not to seek the protection of its government in the event of dispute under penalty of forfeiting its interests in favour of the Mexican nation if it seeks such protection.

1.5 Foreign investors with investment commitments

Pursuant to the prior foreign investment law and its regulations, under certain circumstances foreign investors could own more than 49 percent of a Mexican company, provided that they committed to comply with certain performance requirements. The most common requirements are related to foreign currency balances and job creation. Those performance requirements have proved onerous for many foreign investors.

⁷ Transitory Article Four of the FIL provides that the 1989 Foreign Investment Regulations will continue to apply, to the extent they do not contravene the FIL, until new regulations are issued.