

COLLOQUIUM ON CERTAIN LEGAL ASPECTS
OF FOREIGN INVESTMENT IN MEXICO:
REGULATION OF CAPITAL INVESTMENT,
PATENTS AND TRADEMARKS, AND
TRANSFER OF TECHNOLOGY

INTRODUCTION AND INITIAL COMMENTS

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The foreign investor and his legal counsel must be vitally concerned with the laws of the country into which investment is to be made; this should, in fact, be a continuing concern. The investment itself may be one of capital, of machinery and equipment, of management skills, of rights to industrial property, of know-how, or it may be one of a combination of these or of other forms of foreign economic presence in the host country.

The perceived effect of foreign investment on the economy of developing countries has been the subject of serious and intense discussions in international fora and has been reflected in the legislation of a certain number of developing countries, including Mexico.

Mexico is an important trading partner of the United States, a country where United States investment and influence is large, and a country which has a substantially free market economy. Mexico has also been one of the leaders of the Third World, as the group of developing countries is sometimes called, in calling for a new world economic order which would recognize and redress the inequality of the present balance of wealth and standards of living between the developed industrial countries and the rest of the world.

Several laws have been enacted in Mexico that deal directly with the conditions under which foreigners may do business in Mexico and with Mexicans. The widest in scope of these basic modern pieces of legislation is the Law to Promote Mexican Investment and to Regulate Foreign Investment, enacted in 1973. The Law on the

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Transfer of Technology dates from 1972, and the Law on Inventions and Trademarks came into effect in 1976. It may be noted that a series of similar basic characteristics are to be found in these laws; these include departures from classical legal concepts in, for example, industrial property forms, as well as the notion that essentially private business transactions have a fundamental impact on the national economy and therefore governmental mechanisms are necessary to evaluate the favorable or unfavorable effect of particular transactions and to make appropriate decision on their validity. A further characteristic of these laws, and one which is closely tied to the discussion above, is the discretion given to appropriate Mexican administrative authorities to interpret the requirements of the laws; this characteristic can allow for a large measure of flexibility.

The papers describing these laws and analyzing their characteristics that appear in the pages following this introduction were given at a Colloquium on Certain Legal Aspects of Foreign Investment in Mexico held in Atlanta on April 8, 1976.¹ The Colloquium brought together an interested group of United States lawyers and several distinguished Mexican lawyers who have been deeply involved in these areas of economic law. The principal contributors to the meeting were as follows: Jaime Alvarez Soberanis, Director General of the National Registry on the Transfer of Technology, Mexico; David Rangel Medina, Professor of Industrial Property Law at the National University of Mexico and partner in the law firm of Basham, Ringe y Correa, Mexico City; and Adolfo Arrioja Vizcaino, Professor at the National University of Mexico and Universidad Ibero-Americana, and partner in the law firm of Bufete, Rubio and Billegas, Mexico City.

Four commentators raised issues and initiated the general discussion, which ranged over wide areas of the fields under examination but focused on specific problems articulated by the participants in the Colloquium regarding the manner in which the three laws are applied. Peter Goldmark, Director of Latin American Affairs of the Council of the Americas, and Anthony B. Askew of the Atlanta law firm of Jones, Thomas & Askew commented on the major papers.

¹ The Colloquium was sponsored by the Southern Council for International and Public Affairs; Peter C. White is the Executive Director of the Southern Council. The other sponsor of the Colloquium was the Georgia Society of International and Comparative Law at the University of Georgia School of Law.

Two student commentators, Donald Andersen² of the *Georgia Law Review* and Kenneth Klein³ of the *Georgia Journal of International and Comparative Law*, also submitted comments; these comments appear in this report of the Colloquium.

Whatever may be the future of the present Mexican legislation, the three laws examined should be viewed in the context of the general economic development goals of the Third World. The laws have already inspired imitation by other countries and are having an impact on multilateral negotiations regarding international codes of conduct for transnational corporations and for the transfer of technology; in turn, the Mexican legislation was greatly influenced by the laws and practices of certain other countries, both developed and developing.

The "investment climate" for foreign investors is a complex and elusive concept. It is very much reflected in laws such as the Mexican laws on foreign investment, transfer of technology and industrial property, and, of course, in the practice that grows out of their application.

² Donald Andersen is currently with the firm of Jones, Thomas & Askew, Atlanta.

³ Kenneth Klein is currently Fellow of the American Society of International Law, Washington, D.C.

