

COMMENT

*Kenneth Klein**

The Law to Promote Mexican Investment and to Regulate Foreign Investment,¹ as has been pointed out, is intended to enhance industrial development, especially of Mexican enterprises, without significantly impeding the inflow of foreign capital and technology into the Republic of Mexico. The law recognizes that the ability to take home profits is essential if foreign investment is to exist, but it attempts to assure that commensurate benefits will be received by Mexico. In light of these goals I have four main areas of inquiry with regard to the statute. My questions shall be directed mainly to Senor Arrioja.

The law restricts certain activities (such as petroleum, electricity, or railroad activities) to the state alone² and other activities (such as radio and television, domestic air and maritime transportation, or gas distribution activities) only to Mexican individuals or Mexican companies with only Mexican ownership.³ In other areas, with some exceptions,⁴ up to 49 percent foreign ownership "of the capital of business enterprises" is permitted, provided that the foreign ownership is not entitled "to determine the management of the business enterprise."⁵ The National Commission on Foreign Investment, however, may decide to increase or decrease the allowable percentage of foreign ownership if such would be "in the interest of the country's economy."⁶ I suspect that in many cases the latter decision will become very much of a nonlegal and practical question; that is, to what extent does there exist Mexican capital and management available and willing to participate in a given field of activity. Given the state of Mexican development (and I do not pretend to know just how significant it is), Señor Arrioja, how likely is it that Mexican control will be maintained? To what extent? And will such a maintenance of control discourage foreign investment to a significant degree?

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¹ Diario Oficial, Mar. 9, 1973.

² *Id.* art. 4.

³ *Id.*

⁴ See *id.* art. 5.

⁵ *Id.*

⁶ *Id.*

The law adopts the policy that new foreign enterprises "should not displace national business enterprises that are operating satisfactorily."⁷ The statute does not address itself to the situation where a foreign enterprise begins operating in Mexico at a time when few or no Mexican enterprises are "operating satisfactorily" in the particular activity, but subsequently there is such satisfactory operation by a Mexican entity or entities. Would there then be a threat to the continued operation of the foreign investor? The law does not appear to cope with this problem and thus may threaten the future stability of foreign investments.

Foreign investment laws of other countries are much more specific or restrictive with regard to foreign investments; for example, concerning the degree to which profits may be taken out or which industries may have foreign ownership. The Mexican Law establishes 17 rather general criteria upon which this decision is to be made;⁸ for example, the "effect on employment,"⁹ contribution to development,¹⁰ the effect on price levels and production quality,¹¹ or the respect shown Mexico's social and cultural values.¹² To what extent, Señor Arrijoja, will these criteria be made more specific, as in administrative regulations? To what degree do you think the interpretation of the criteria will be subject to change by the same or different government, thus posing a potential threat to the stability of investment?

Article 26 of the law states that the National Commission on Foreign Investment may consult public institutions or private organizations of businessmen, workers, farmers, professionals, technicians, etc., in reaching a decision on foreign investment. Article 13 requires that the effect on employment¹³ be considered, including job opportunities created and wages paid. Presumably (or at least hopefully) any development scheme is ultimately aimed at an increase in the standard of living of the population. To what extent, if any, are worker interests consulted and acted upon in these decisions? What kind of wage scales are required? Are any requirements made, such as the necessity to train Mexican workers, in order to encourage increased national employment?

⁷ *Id.* art. 13, sec. II.

⁸ *Id.* art. 13.

⁹ *Id.* art. 13, sec. IV.

¹⁰ *Id.* art. 13, sec. IX.

¹¹ *Id.* art. 13, sec. XIII.

¹² *Id.* art. 13, sec. XIV.

¹³ *Id.* art. 13, sec. IV.