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Political decisions of the new federal government in Mexico are disrupting business activities

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This paper analyses how political decisions are disrupting business activities in Mexico. The first part discusses how the decisions of the new government in Mexico have been unpredictable to the legal and the business community. The second section analyzes the legal recourses in Mexico available for companies when adverse political decisions are taken, and how can companies prevent themselves from being damaged in the event of future business disruptions caused by political decisions.

I. Talk less, listen more and follow the rule of law.

Since 2018, the new federal government in Mexico has moved to differentiate itself from past governments. The Mexican president Lopez Obrador has promised to fight corruption, poverty, insecurity and violence. The president's approach is populist and nationalistic. He has announced plans to grant scholarships, pensions, and give cash to Mexicans for specific social groups. So far, his actions on such issues have failed. He has fought fuel theft from pipelines owned by Pemex, the state oil company, but this has not gone down and has caused fuel shortages. As a consequence, financial institutions have no confidence in the plan to rescue Pemex. On another example, Mexico deployed thousands of soldiers to the southern border with Guatemala to stem the flow of undocumented immigration to avoid tariffs in goods imported from Mexico as announced by President Trump who threatened to impose tariffs on Mexican imports if the country didn't halt the growing number of undocumented people crossing Mexico to reach the United States. Despite those tariff and border threats, fortunately the tariff issue was just a political statement and Mexico continues to be the largest United States trading partner.

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President Lopez Obrador also supported a questionable referendum that led to the cancellation of a multimillion airport project. As an immediate consequence, such decision led the Mexican Peso to a regrettable loss. From a legal standpoint such decision provoked a number of legal claims against the government both for contracts that were unilaterally terminated as well as for the decision to rehabilitate an air force base as the site of the new airport. The Mexican government is spending millions of Dollars to indemnify pay.

On another regrettable action from a member of the president's political party, it was introduced a bill to the Mexican congress proposing to eliminate several bank fees. As an immediate consequence, the Mexican stock exchange had a loss. Fortunately, such bill was rejected but the damage was done.

Another example deals with the Federal Electricity Commission when it announced that it had filed requests for arbitration in the London Court of International Arbitration and International Court of Arbitration in Paris to annul clauses in several gas pipeline contracts awarded to Mexican, United States and Canadian companies with an aim to renegotiate those contracts that have been defined by the Mexican president as abusive to the state. These actions sent a negative signal to investors about the business environment in Mexico. Legal actions were taken by counsel of the gas companies and settlement negotiations about the contracts initiated in parallel to the international arbitration processes. A settlement was announced by the Mexican government where penalties in favor of the gas companies were paid.

On a recent political decision that is affecting Mexico, President Trump announced to legally designate Mexican drug cartels as terrorist groups after a deadly attack on United States citizens in northern Mexico. This designation could bring devastating effects to Mexican and United States companies since sanctions may include controls on exports and sales; restrictions on financial assistance; litigation in Mexican and United States courts; and prohibiting companies and citizens from engaging in financial and business transactions in Mexico without government authorization.

These examples point at what to expect from the new government where political and ideological views will be pushed forward regardless of what the market and the legal framework provides. Mexico has traditionally provided a safe haven to investors from political risk. However, making decisions that hurt the confidence of the investors is bringing actions against the Mexican government through legal recourses and preventive actions that have proved to be effective.

II. Fighting political decisions by legal means

Within this whole set of political decisions, there are encouraging news. As an important step towards the ratification of trust of international investors, in mid-2019 Mexico became the first country to ratify the new North American free-trade agreement. However, the United States Congress still needs to set a date for a ratification vote considering that the United States presidential campaign is on its way.

It is also worth to note that the legal framework in Mexico protects private parties' investments in Mexico. Mexico is a full member to multiple bilateral, regional and multilateral treaties where investment arbitration is available for companies against national governments. International litigation and arbitration under contracts are also available in Mexico. Mexico's judicial system stands as an independent branch where international contracts and foreign judgments are recognized and enforced which give legal certainty to the business community. For example, in year 2000, an arbitral tribunal constituted pursuant to Chapter XI of the North American Free Trade Agreement (NAFTA) issued an award against the Mexican government regarding violations of Sections 1105 and 1110 of NAFTA in favor of a United States company. Consequently, the arbitral tribunal resolved that Mexico shall pay a multimillion judgment for damages. This arbitration dispute was raised by the United States company, whose Mexican subsidiary operated a station for the transfer and confinement of hazardous waste in the state of San Luis Potosi, Mexico.

On another case, after years of arbitration a Mexican court nullified an arbitration award issued by the International Chamber of Commerce in favor of a United States energy company in excess of \$465,000,000 against Pemex, a state-owned company stating that claims were not arbitrable under newly enacted laws in Mexico. However, a United States court issued a further ruling stating that such award should be enforced despite the Mexican court decision. Pemex may have a right to make a further appeal but the United States court resolution is a huge step towards a final resolution in favor of the United States company.

Throughout our legal practice, we have seen clients that have been affected by political decisions. Some issues had to do with travel alerts issued by some foreign embassies in Mexico regarding violence and insecurity in certain regions of the country. In these cases, we have seen that the main legal argument for the termination of contracts has been the allegation of a force majeure event. In a specific case, the travel alert lead a client to entirely cancel a scheduled world convention in a tourist destination in Mexico which followed the cancellation of hundreds of hotel rooms in a five-star hotel, along with the termination of contracts with service providers in Mexico. In such case a favorable settlement agreement was reached by the client as the signer for the hotel did not have sufficient powers to execute agreements under Mexican law and should litigation have arisen in Mexico, a Mexican court may have determined that the agreement was void. This was a material issue under the negotiations for the client which represented important savings from the penalty in the agreement. This type of political decisions have led to redraft and adequate stronger cancellation terms; force majeure and impossibility provisions and analyze whether the applicable law and jurisdiction clause of a foreign state is convenient.

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