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## Planning for Free Trade: Taking Advantage of the Transition.

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## PLANNING FOR FREE TRADE: TAKING ADVANTAGE OF THE TRANSITION

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### I. INTRODUCTION

After two decades of restrictive policies regarding foreign involvement in the Mexican economy, Mexico is transforming the legal and regulatory structure that has stifled the inflow of financial and technological resources from foreign investors. With these reforms in place, Mexico has significantly improved the conditions for placing U.S. franchises across the border. Nineteen ninety-one witnessed significant expansion of U.S. franchises into Mexico. In the first ten months of 1991 alone, the Mexican government approved as many franchises

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as the sum total of all years prior to 1989.<sup>1</sup> Past economic policies directed Mexico to build walls around itself, penetrable under most circumstances only at the behest of the government. In the words of Ambassador Carla Hills, United States Trade Representative, "We saw a Mexico whose policies were highly interventionist, characterized by trade protection, a restrictive investment environment, a large degree of state ownership and control of business, and an overly regulated business climate."<sup>2</sup>

Recent years however, have witnessed profound changes in these manifestations of nationalistic economic policies. Mexico has decreased tariff rates, eliminated import licenses for numerous products, divested over half of the businesses previously owned or operated by the state, tempered restrictions on foreign investment, increased protection of industrial property, and abolished impediments to the transfer of technology.<sup>3</sup> With astonishing rapidity, the current administration, under the direction of President Salinas de Gortari,<sup>4</sup> is demolishing these obstructive aspects of the Mexican economy and, consequently, opening the country up for business.

In addition to this activity taking place on the Mexican home front, international negotiations between Mexico and the United States are underway on the terms of a bilateral free trade agreement. Both sides have great incentives to reach an agreement, considering the amount of trade between the two countries which today runs at about sixty billion dollars per year.<sup>5</sup> The parties hope to eliminate restrictions on the free flow of goods, services, and investment.<sup>6</sup> If the parties reach

1. William M. Methenitis & John M. Vernon, *Proposed Trade Agreement May Boost Franchising in Mexico*, 4 FRANCHISE LEGAL DIGEST 13, 13 (1991).

2. *U.S.-Mexico Economic Relations: Hearings Before the Subcomm. on Trade, House Comm. on Ways & Means*, 101st Cong., 2d sess. 47-65 (1990), partially reprinted in 22 ST. MARY'S L.J. 583, 584 (1991).

3. *Id.*

4. President Salinas is serving a six-year term running from December 1, 1988 through November 1, 1994.

5. Barbara Bader Aldave, *Toward Freer Trade and More Commerce Between the United States and Mexico*, 22 ST. MARY'S L.J. 579, 580 (1991). Mexico is the United States' third largest trading partner, and the United States accounts for more than two-thirds of Mexico's total trade. In 1989, the United States exported \$25 billion to and imported \$27.2 billion from Mexico. *U.S.-Mexico Economic Relations: Hearings Before the Subcomm. on Trade, House Comm. on Ways & Means*, 101st Cong., 2d sess. 47-65 (1990), partially reprinted in 22 ST. MARY'S L.J. 583, 584 (1991).

6. Negotiating goals include "elimination (as far as possible) of [tariff and] non-tariff barriers; the establishment of an open investment climate; and full protection of industrial prop-

agreement, and if Canada decides to join such an agreement to form a North American free trade zone, the result will be the creation of the largest trading block in the world.<sup>7</sup> Without a doubt, a North American Free Trade Agreement (NAFTA) would provide even better access to the growing market in Mexico. There are, however, no certainties as to when such an agreement might be reached.<sup>8</sup> Moreover, given that there is a ten year transition period for the U.S.-Canada Free Trade Agreement (FTA), it is likely that the same period or longer will be allowed to usher in NAFTA.<sup>9</sup> Despite possible delay in finalizing the agreement and in the subsequent implementation of NAFTA, foreign investors looking toward this development need not wait for it to happen. As Ambassador Hills testified, NAFTA is simply "a strong reinforcement for the free market reforms Mexico has already made and a catalyst for future reform."<sup>10</sup>

After taking office in 1988, President Salinas announced his intentions to take the necessary steps to modernize the economy and the country in general. The objectives of the Salinas administration, outlined in the National Program for Modernization of Industry and Foreign Trade, include the internationalization of the Mexican economy, the promotion of exports, a stronger internal market, technological development, and widespread deregulation of economic activities.<sup>11</sup> In furtherance of these objectives, the Salinas administration has pursued sweeping changes in the legal and regulatory framework of Mexico to make the business climate more attractive to foreign participation. Mexico has made significant changes in eco-

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erty rights." U.S. Department of State, *Gist: North American Free Trade Agreement*, Department of State Dispatch, June 24, 1991.

7. Barbara Bader Aldave, *Toward Freer Trade and More Commerce Between the United States and Mexico*, 22 ST. MARY'S L.J. 579, 580 (1991).

8. Some U.S. officials predict that NAFTA might not be agreed upon until 1993 because of the U.S. presidential campaign which may "force NAFTA on the back burner" if an agreement is not reached by March or April of 1992. *NAFTA in '93?*, 1 MEXICO TRADE AND LAW REPORTER 4, 4 (1991).

9. William M. Methenitis & John M. Vernon, *Proposed Trade Agreement May Boost Franchising in Mexico*, 4 FRANCHISE LEGAL DIGEST 13, 13 (Fall 1991).

10. *U.S.-Mexico Economic Relations: Hearings Before the Subcomm. on Trade, House Comm. on Ways & Means*, 101st Cong., 2d sess. 47-65 (1990), partially reprinted in 22 ST. MARY'S L.J. 583, 584 (1991).

11. LA SECRETARIA DE COMERCIO Y FOMENTO INDUSTRIAL (MINISTRY OF COMMERCE AND INDUSTRIAL DEVELOPMENT), PROGRAMA NACIONAL DE MODERNIZACION INDUSTRIAL Y DEL COMERCIO EXTERIOR (1990-1994) (NATIONAL PROGRAM FOR MODERNIZATION OF INDUSTRY AND FOREIGN TRADE) (January 15, 1990).

conomic policies addressing foreign investment, technology transfer, and industrial property. These changes were made because of the present administration's realization that past policies had served only to facilitate Mexico's fall into economic doldrums. The administration is looking to foreign investors and foreign businesses to help boost the nation's lagging economy and is implementing the legal and regulatory reforms necessary to encourage them "to bank on Mexico." These reforms have created a gateway into Mexico regardless of the outcome of a NAFTA.<sup>12</sup>

The Mexican government's recent enactment of the Law for the Promotion and Protection of Industrial Property<sup>13</sup> (1991 industrial property law) indicates the commitment of the Salinas administration to open up the Mexican economy. Marking a milestone in Mexican economic policy, this new law provides broader and longer protections of industrial property and eliminates the regulatory barriers to the free transfer of technology.

The significance of this overhaul of the industrial property and technology transfer framework in Mexico is clearly evident when one considers the historical context in which it developed. The progression of foreign investment, technology transfer, and industrial property laws and regulations is revealing. Part II of this article addresses Mexico's approach to foreign investment in its economy over a period of approximately seventy years, concluding with the 1989 regulatory enactments by President Salinas. Part III deals specifically with the gradual implementation of restrictions on the transfer of technology and the limitations on industrial property protections. The resulting web of regulations implemented over the years was torn down by the 1991 industrial property law, the specifications of which are discussed in part IV. Concluding remarks are made in part V.

## II. FOREIGN INVESTMENT

In 1989, the Salinas administration promulgated new regulations to implement the existing Foreign Investment Law of 1973. The opera-

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12. See generally William M. Methenitis & John M. Vernon, *Proposed Trade Agreement May Boost Franchising in Mexico*, 4 FRANCHISE LEGAL DIGEST 13, 13 (1991) (providing seven elements that should be considered in strategizing for expansion into Mexico).

13. Ley de Fomento y Protección de la Propiedad Industrial, D.O., June 27, 1991 [*hereinafter* 1991 Industrial Property Law] (Law for the Promotion and Protection of Industrial Property).

tive provisions of these regulations (foreign investment regulations)<sup>14</sup> streamlined, minimized, clarified, or virtually eliminated bureaucratic red tape that has traditionally slowed or otherwise impeded the vital process of investment and development in Mexico. The foreign investment regulations represent a significant departure from the strict limitations on foreign investment dictated by the underlying law.

#### A. *The Foreign Investment Law of 1973*

Mexican governmental policy in the area of foreign investment has ebbed and flowed since the administration of Porfirio Diaz in the late 1800s. The economic model employed during the Diaz administration was outward-looking, in which the government took a passive role and allowed market forces to work.<sup>15</sup> In an effort to industrialize Mexico, Diaz strongly encouraged foreign investment. The influx of investments resulted in foreign control of most areas of the Mexican economy, including, among others, rail transport, mining, and oil development. Porfirio Diaz's dictatorial regime lasted thirty-four years, from 1877 until the full consolidation of the revolutionary movement against his administration in 1910 which was, in part, a reaction against his economic policies.

Out of the Revolution of 1910, the Constitution of 1917<sup>16</sup> was born. The Constitution of 1917, reinforced the exalted principles of sovereignty and independence from foreign economic and political control.<sup>17</sup> For the next fifty years following ratification of the Constitution of 1917, the Mexican government expanded the otherwise minimal restrictions imposed by the Constitution to restrict foreign investment even more.<sup>18</sup> The Mexican government dramatically

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14. Reglamento de la ley para Promover la Inversion Mexicana y Regular la Inversion Extranjera, D.O., May 16, 1989 [*hereinafter* Foreign Investment Regulations] (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment).

15. Fernando Sanchez Ugarte, *Mexico's New Foreign Investment Climate*, 12 HOUS. J. INT'L L. 243, 244 (1990). The Diaz model sought greater exportation of primary goods to boost the economy. *Id.*

16. Constitucion Politica de los Estados Unidos Mexicanos, D.O., Feb. 5, 1917 [*hereinafter* Constitution of 1917 or Mexican Constitution] (Political Constitution of the United Mexican States).

17. "Under equal circumstances, Mexicans will be preferred versus foreigners for all kinds of concessions and for all jobs, appointments, and Government commissions." CONST. art. 32 (Mexico).

18. Jorge Camil, *Mexico's 1989 Foreign Investment Regulations: The Cornerstone of the New Economic Model*, 12 HOUS. J. INT'L L. 1, 6 (1989).

reduced foreign investment in Mexico through sporadic, defensive legislation and uncodified action. At the same time, the Mexican government itself became a significant player in the economic process by nationalizing a number of economic activities. From 1917 to 1940, the government expropriated agrarian properties<sup>19</sup> and nationalized the railroad company,<sup>20</sup> as well as foreign-owned oil companies.<sup>21</sup> As a consequence of these initiatives, foreign investment dropped considerably.

From 1940 to 1970, under the rubrics of "import substitution"<sup>22</sup> and "industrial integration,"<sup>23</sup> the Mexican government employed tariffs, tax concessions, and import licenses depending on "the status of the economy, the balance of payments, or the prevailing sentiment towards foreign capital."<sup>24</sup> Despite the considerable restrictions on foreign capital, foreign investment poured into Mexico because of the attractiveness of a market which was protected by tariffs and which offered tax concessions and other incentives.<sup>25</sup> Foreign investors were prohibited from investing in public services, so the prime beneficiary of foreign investment was the industrial sector.<sup>26</sup> During that period, the Mexican economy started reporting record growth rates of four to six percent. Foreign investment grew at comparable rates and played an important role in what economists called the "Mexican miracle."<sup>27</sup>

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19. *Id.* The objective underlying the expropriation of agrarian properties was to change the concept of private property by giving it a new meaning, a social meaning. Article 27 of the Mexican Constitution of 1917 provides that

the Nation shall at all times have the right to impose on private property such limitations as the public interest may demand, as well as the right to regulate the utilization of natural resources which are susceptible of appropriation in order to conserve them and to insure more equitable distribution of public wealth.

CONST. art. 27 (Mexico).

20. Presidential Decree, D.O., June 24, 1937.

21. Presidential Decree, D.O., Mar. 18, 1938.

22. Jorge Camil, *Mexico's 1989 Foreign Investment Regulations: The Cornerstone of the New Economic Model*, 12 HOUS. J. INT'L L. 1, 7 (1989). "Import replacement" was a policy designed to encourage local manufacturers to establish plants for start-to-finish manufacturing, rather than for assembling or processing imports. *Id.* at 7 n.54.

23. *Id.* at 7. "Industrial integration" refers to domestic manufacturing of domestic raw materials and intermediate goods. *Id.* at 7 n.55.

24. *Id.* at 7.

25. *Id.* at 7-8.

26. Fernando Sanchez Ugarte, *Mexico's New Foreign Investment Climate*, 12 HOUS. J. INT'L L. 243, 244 (1990). Industry became one of the primary sources of employment, and the social and economic character of Mexico was fundamentally changed. *Id.*

27. *Id.*

This situation remained generally unchanged until the 1970s.

Under the administration of President Luis Echeverría, the Mexican Congress passed a series of laws<sup>28</sup> designed to restrict foreign business activity in Mexico. With the enactment of the Law to Promote Mexican Investment and Regulate Foreign Investments (foreign investment law),<sup>29</sup> foreign investment activity fell dramatically. The foreign investment law was enacted, in part, to codify the existing jurisprudence dealing with foreign ownership of Mexican businesses into a coherent and practical foreign investment policy and to reassert the philosophies of sovereignty and independence contained in the Constitution of 1917.<sup>30</sup> The foreign investment law sets forth three main objectives: first, foreign investment should be complementary to and not a substitute for Mexican investment; second, foreign investment should be associated with domestic capital; and third, new foreign investment must participate in new businesses and never be used to acquire existing enterprises.<sup>31</sup>

The main principle embodied in the foreign investment law establishes that, unless an exemption is granted, all new foreign direct investment must be made in association with Mexican partners. The Mexican partner must hold a majority interest in the business and exercise operating control of the business.<sup>32</sup> In addition, the law re-

28. These laws include the 1972 Technology Transfer Law, the 1973 Foreign Investment Law, and the 1976 Industrial Property Law which are cited herein. Foreign and domestic investors alike were surprised when President Echeverría abandoned existing economic policies during his term in office. In 1970, it was the general belief that the current statutory and non-statutory restrictions provided the government the flexibility to react to changing economic policies, so nobody expected the government to enact a law specifically regulating foreign investment which might encourage foreign reluctance to invest in Mexico. Jorge Camil, *Mexico's 1989 Foreign Investment Regulations: The Cornerstone of the New Economic Model*, 12 HOUS. J. INT'L L. 1, 8 (1989).

29. *Ley para Promover la Inversion Mexicana y Regular la Inversion Extranjera*, D.O., March 9, 1973 [*hereinafter* Foreign Investment Law] (Law to Promote Mexican Investment and to Regulate Foreign Investment).

30. See Jorge Camil, *Mexico's 1989 Foreign Investment Regulations: The Cornerstone of the New Economic Model*, 12 HOUS. J. INT'L L. 1, 10, 11 (1989).

31. *Ley para Promover la Inversion Mexicana y Regular la Inversion Extranjera*, Exposición de Motivos, D.O., March 9, 1973 (statement of reasons). This document contains the reasoning of the Executive Branch in requesting Congress (Congreso de la Union de los Estados Unidos Mexicanos) to adopt the foreign investment law. The law defines foreign investment as any investment made by foreign individuals, corporations, or foreign economic entities in general, or by Mexican companies in which the operation and management control is vested in foreigners. *Id.* at art. 2.

32. *Id.* at art. 5.



quires all foreign investors, Mexican companies with foreign shareholders, Mexican trusts with foreign participations, and shares owned or held by foreign investors to register with the National Registry of Foreign Investment (the NRFI) pursuant to the provisions of article 23 of the foreign investment law.<sup>33</sup>

As mentioned above, the general rule under the foreign investment law is that foreign investors may freely participate in Mexican business by owning up to forty-nine percent of the capital stock of the corporation without having to obtain any authorization from the NRFI.<sup>34</sup> The NRFI had, however, the discretion to allow majority foreign ownership when certain projects had the potential to benefit Mexico in ways consistent with the economic policy.<sup>35</sup>

Despite the general fifty one to forty-nine percent rule, the foreign investment law reserves certain areas exclusively for the state,<sup>36</sup> and other areas for Mexican investors.<sup>37</sup> Departing from the fifty-one to forty-nine percent rule even further, the foreign investment law limits foreign ownership to levels below forty-nine percent for certain otherwise unrestricted activities. For example, the law allows only forty percent foreign investment in secondary petrochemical areas and in the manufacture of automotive parts and components.<sup>38</sup> Additionally, with respect to the acquisition of an existing Mexican company, the NRFI requires prior authorization by the NRFI if foreign investors or Mexican companies controlled by foreigners wish to acquire in total more than twenty-five percent of its capital or forty-nine percent of its assets.<sup>39</sup>

The foreign investment law was specifically designed to obstruct the flow of foreign capital into Mexico, and the years following its enact-

33. Foreign Investment Law at art. 23.

34. *Id.* at art. 5.

35. *Id.* at art. 13. The NRFI had to consider the likely impact on employment, training of the work force, technology, and geographic location, among other things. *Id.*

36. These include petroleum and basic petrochemicals, development and use of radioactive minerals and nuclear power sources, electricity, railroads, telegraph communications, and wireless communications. *Id.* at art. 4.

37. These include domestic sea and air transportation, gas distribution, forestry, television, radio, urban transportation, and transportation on federal highways. Foreign Investment Law at art. 4.

38. The exploitation of national mining reserves is another area excluded from the fifty-one to forty-nine percent general rule. In this area, foreign investors may hold up to thirty-four percent of the corporations's capital stock. *Id.* at art. 5.

39. The lease of an enterprise or of assets essential for its operation is considered an acquisition. *Id.* at art. 8.

ment demonstrated the intended effect. Although direct investment fell, indirect foreign investment almost tripled between 1973 and 1976 by an increase in foreign debt.<sup>40</sup> The Echeverría government initiated the country's devastating reliance on external debt which has hindered economic growth up to the present time.<sup>41</sup>

Substantial borrowing and restrictions on foreign investment continued under the subsequent administration of President Lopez Portillo.<sup>42</sup> Lopez Portillo's term ended in 1982 along with the oil boom which had sustained Mexico since the late '70s. By this time, the bottom had fallen out of the economy,<sup>43</sup> and the next administration was forced to pick up the pieces.

### B. *The Foreign Investment Law Regulation of 1989*

Up until 1982, the Mexican government was never confronted by difficult economic choices because the oil boom had overshadowed any that existed. The thriving oil industry in the late '70s enabled the government to sustain its increasing debt. However, when the economic climate changed so dramatically, Mexico was faced with hard economic choices.<sup>44</sup> President Miquel de la Madrid, the predecessor of President Salinas, was the first since the Revolution to publicly recognize the importance of foreign investment in the development of the Mexican economy.<sup>45</sup> Under the direction of President de la Madrid, Mexico took the first step to end its closed economy and became a party to the General Agreement on Tariffs and Trade in 1987, thus

40. Jorge Camil, *Mexico's 1989 Foreign Investment Regulations: The Cornerstone of the New Economic Model*, 12 HOUS. J. INT'L L. 1, 11 (1989).

41. *Id.* at 11. In the absence of direct investment, the administration turned to debt to support its income distribution initiatives. *See id.*

42. *Id.*

43. The President ended his term of office in 1982 amidst economic confusion caused by the following factors: (a) the substantial fall in international oil prices, (b) the ninety billion dollar external debt, (c) the devaluation of the Mexican peso, (d) the nationalization of commercial banks, (e) the mandatory conversion of all domestic dollar deposits into pesos, and (f) the imposition of foreign exchange controls for the first time in modern Mexico.

*Id.* at 11, 12.

44. Luis Rubio, *Mexico in Perspective: An Essay on Mexico's Economic Reform and the Political Consequences*, 12 HOUS. J. INT'L L. 235, 235 (1990).

45. In his inaugural speech, President de la Madrid declared that he was going to implement an "Immediate Program of Economic Reordering and Development." Plan Nacional de Desarrollo, D.O., May 31, 1983. Within the overall strategy of the plan, foreign investment plays a key role in the development of Mexico's economy. *Id.*

ending more than twenty years of protectionism.<sup>46</sup> This major event signaled a general deregulation in the area of trade and was viewed as an immediate precursor to deregulation of the areas of foreign investment, technology transfer, and industrial property.

When President Salinas took over the helm, he was faced with the dilemma<sup>47</sup> of how to change the existing restrictions on foreign investment. The president had to decide whether to ask Congress to amend the foreign investment law, to issue resolutions under the NRFI, as had been done over the past three administrations,<sup>48</sup> or to utilize his own regulatory powers to modify the existing law.<sup>49</sup> NRFI resolutions were often criticized as an usurpation of NRFI power and absolutely beyond its legal authority.<sup>50</sup> Because there was always some question as to the validity of such resolutions, foreign investors did not completely trust such promulgations. President Salinas elected to use his personal regulatory powers, and on May 16, 1989, the new Regulations for the Law to Promote Mexican Investment and Regulate Foreign Investment (foreign investment regulations) were published in the *Diario Oficial*. The new foreign investment regulations in all due respects virtually amended the foreign investment law<sup>51</sup> and therefore are an important step toward the deregulation of the foreign investments area and the reform of the Mexican economic structure in general.

As explained above, the foreign investment law of 1973 limited foreign investment to forty-nine percent and gave the NRFI authority to allow one hundred percent ownership, provided the investment was judged beneficial to the country.<sup>52</sup> The approval process was extremely uncertain, time consuming, and bureaucratic. The new for-

46. William M. Methenitis & John M. Vernon, *Proposed Trade Agreement May Boost Franchising in Mexico*, 4 *FRANCHISE LEGAL DIGEST* 13, 15 (1991).

47. Jorge Camil, *Mexico's 1989 Foreign Investment Regulations: The Cornerstone of the New Economic Model*, 12 *HOUS. J. INT'L L.* 1, 13 (1989).

48. *Id.*; see Ignacio Gomez-Palacio, *The New Regulation on Foreign Investment in Mexico: A Difficult Task*, 12 *HOUS. J. INT'L L.* 253, 257-58 (1990) (discussing NRFI's legal authority and guidelines for issuing resolutions).

49. The Constitution of 1917 gives the president the power to execute and promulgate the laws issued by Congress. CONST. art. 89 (Mexico). This power has been interpreted to include the power to enact regulations to explain or supply working rules for provisions of law. HARRY K. WRIGHT, *FOREIGN ENTERPRISE IN MEXICO* 16 (1971).

50. See Jorge Camil, *Mexico's 1989 Foreign Investment Regulations: The Cornerstone of the New Economic Model*, 12 *HOUS. J. INT'L L.* 1, 13 (1989).

51. *Id.* at 13.

52. Foreign Investment Law at art. 5.

foreign investment regulations allow one hundred percent foreign ownership of businesses engaged in unrestricted activities without prior approval by the NRFI, provided the investor complies with the following requirements:

1. the investment is no more than the amount established from time to time by the Ministry of Commerce and Industrial Development;
2. the investment is made with financial resources originating abroad or from personal economic resources if the foreign investor is established as such in Mexico;
3. the industrial facilities are located outside of certain areas of significant industrial concentration, including Mexico City, Guadalajara, and Monterrey;
4. a balanced accumulated foreign currency budget is maintained for the first three years of operations;
5. the new ventures generate permanent employment and establish continuous training programs; and
6. the business uses adequate technology and observes the strictures of environmental protection rules.<sup>53</sup>

This specification of conditions eliminated the discretion of the NRFI altogether and, consequently, the time-consuming and uncertain negotiating process which in the past had become a necessity to obtain NRFI approval.

In addition, prior authorization is not required in certain cases when foreign investors acquire shares of previously existing enterprises, as long as the acquired shares are issued by an in-bond company (*maquiladora*) or a company whose production or main activity is oriented towards exportation.<sup>54</sup> This is the case even when foreign investment in the company's capital, as a result of the acquisition, is higher than forty-nine percent.

As a way of circumventing limitations on foreign investment imposed by the foreign investment law or the Constitution, the new foreign investment regulations provide for the use of trusts which are derived in large part from the Anglo-American system.<sup>55</sup> Although the foreign investment regulations continue the reservation of certain

53. Foreign Investment Regulations at art. 5.

54. *Id.* at art. 6.

55. See Jorge Camil, *Mexico's 1989 Foreign Investment Regulations: The Cornerstone of the New Economic Model*, 12 HOUS. J. INT'L L. 1, 15 (1989).

areas to ownership by Mexican investors,<sup>56</sup> the new regulations allow foreigners, with prior approval from the NRFI, to hold up to one hundred percent of a Mexican company operating in one of these areas on a temporary basis by means of a twenty-year ownership trust.<sup>57</sup> This mechanism may also be used for ownership in those areas previously limited to foreign ownership at levels less than forty-nine percent.<sup>58</sup>

Foreign dominion of land and water in coastal and border areas was opened slightly. In the past, certain trusts were limited to thirty years. These trusts included those in which Mexican corporations, with foreign participation in the capital stock, acquired ownership of property and businesses within a hundred kilometers along the border and within fifty kilometers of the coasts (restricted zones).<sup>59</sup> Under the new foreign investment regulations, trust agreements and the authorizations for such trusts can be renewed, allowing the total investment to have a duration of sixty years.<sup>60</sup>

The new foreign investment regulations also promote foreign investment in the stock market through the establishment of trust funds with "neutral shares," meaning that such shares do not carry voting rights. Under the foreign investment regulations, fiduciary institutions (banks) may acquire shares of a Mexican corporation whose stock is listed on the Mexican stock exchange. Neutral shares (shares class "N") may be purchased by foreign investors from Mexican banks or through Mexican stock exchange houses who will in turn issue non-voting participation certificates in favor of the foreign investor.<sup>61</sup>

Finally, instilling more certainty in the authorization procedure,

56. See Foreign Investment Law at art. 5.

57. The regulations specify a complete set of criteria for authorizing trust acquisitions and establish the types of companies whose stock may be subject to acquisition. Foreign Investment Regulations at art. 23-26. The criteria involve the company's financial needs and its willingness to expand operations for increased exportation. *Id.* at art. 23.

58. See Jorge Camil, *Mexico's 1989 Foreign Investment Regulations: The Cornerstone of the New Economic Model*, 12 HOUS. J. INT'L L. 1, 15 (1989). Although trusts were utilized under the foreign investment law, their availability depended largely on the current governmental policy since they were subject to NRFI authorization. *Id.* at 16 n. 132.

59. Foreign Investment Law at arts. 18-22. The idea of restricted zones is based in the Constitution of 1917. CONST. art. 27 § I (Mexico).

60. Foreign Investment Regulations at art. 20.

61. *Id.* at arts. 13-15. Although foreigners holding participation certificates are not entitled to vote, they may collect dividends. *Id.* at art. 13.

the new foreign investment regulations establish a term (forty-five days) in which the NRFI must decide upon applications submitted by foreign investors. Under the foreign investment regulations, "silence" by the authorities is presumed to be an authorization.<sup>62</sup>

Despite the considerable liberalization of foreign investment as a result of the 1990 regulations, the underlying law remains in place. The possibility that the more restrictive provisions of the law might be applied by a subsequent administration has to some extent a chilling effect on foreign investment. Expressing the feeling among investors that Mexico could do more to liberalize investment, Ambassador Hills believes that Mexico should consider amending the underlying foreign investment law.<sup>63</sup> If Mexico and the United States continue to move toward economic integration, culminating in a NAFTA, more pressure will fall on Mexico to open up foreign investment opportunities in a more reliable manner by amending the foreign investment law.

### III. TRANSFER OF TECHNOLOGY AND INDUSTRIAL PROPERTY

A more permanent move has recently been taken in the areas of technology transfer and industrial property with the enactment of the 1991 Industrial Property Law. Acting on the proposal by President Salinas, the Mexican Congress fundamentally reformed the legal and regulatory framework governing the protection and transfer of industrial property which had existed in Mexico for over fifteen years. The regulatory obstacles imposed in the past on the importation of virtually all types of products, services, and technology and the inadequate protections of valuable industrial property had discouraged many foreign companies from entering the Mexican market. The 1991 Industrial Property Law has two primary concerns: first, the repeal of the 1976 Industrial Property Law, to increase protection of industrial property in Mexico to a level comparable to that found in most industrialized countries; and second, the abrogation of the 1982 Transfer Of Technology Law,<sup>64</sup> to eliminate many of the stifling regulatory re-

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62. *Id.* at art. 2.

63. Carla A. Hills, Testimony before the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives (June 14, 1990), in 22 ST. MARY'S L.J. 583, 586 (1991).

64. The 1991 Industrial Property Law did not, however, abolish the regulations promulgated to such law except when the regulations are contrary to the 1991 law. The regulations

quirements for the licensing and transfer of technology. "An unstated objective [of the law] is to reassure potential foreign investors that the technology they bring into Mexico will be protected under a regulatory system similar to that of other industrial nations."<sup>65</sup>

A. *The 1972 Transfer of Technology Law and the 1976 Industrial Property Law*

For many years, United States licensors viewed Mexico as a country which fell short of being the land of opportunity that it could be in large part because the technological climate was unfavorable for expansion. Strict regulation of the transfer of technology grew out of the consequences of the economic policy of import substitution actively pursued in the 1940s, 1950s, and 1960s.<sup>66</sup> Because of the protections built up around the domestic industrialization efforts in Mexico during these years, a market insulated from foreign competition was created and, subsequently, foreign resources flowed into Mexico.<sup>67</sup> Similarly, industrial firms had little incentive to invest in technology.<sup>68</sup> The industrial sector gradually became dependent on both technological and economic resources from foreign participants.<sup>69</sup>

In early 1972, the Ministry of Industry and Commerce began drafting a law to address several aspects of the transfer of technology from foreign to Mexican firms which the Echeverría administration perceived to be unfair or detrimental to the technological development

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will exist until such time as new regulations are issued. *Transitorios de Ley de Fomento y Protección de la Propiedad Industrial* at art. IV.

65. Jorge Arciniega & Nancy Ramirez, *Mexico's New Industrial Property Law — New Protection for Foreign Investors*, 1 MEXICO TRADE & L. REP. 7, 7 (1991).

66. See generally John J. Moss, *1990 Mexican Technology Transfer Regulations*, 27 STAN. J. INT'L L. 215, 218 (1990) (presenting a full discussion of the philosophy behind import substitution and showing that although import substitution resulted in a flourishing manufacturing sector in Mexico, its failure to result in increased exports and the burden on government resources caused by its subsidization of local industries marked the policy's downfall).

67. *Id.* at 220.

68. *Id.* at 222. Moss argues that there is an important "connection between trade policy and private-sector concern about technology [which] was dramatically illustrated after Mexico's 1986 adherence to the General Agreement on Tariffs and Trade" (GATT). In 1988, after Mexico made drastic cuts in import tariffs and other import barriers in accordance with GATT rules, eighty-one percent of mid-sized Mexican firms indicated their interest in technological modernization, compared with only thirty-nine percent in 1985. *Id.*

69. See *id.* at 224.

of Mexico.<sup>70</sup> Requiring registration of all technology<sup>71</sup> contracts with Mexican parties and listing fourteen grounds justifying denial of registration,<sup>72</sup> the 1972 Technology Transfer Law, once passed, was a strong disincentive to the licensing of technology.<sup>73</sup> Franchising fell within the broad scope of the law which was intended to reach virtually all types of technology transfer.<sup>74</sup>

The former industrial property law was the Law of Inventions and Marks (1976 industrial property law), enacted during the Echeverría administration.<sup>75</sup> The 1976 industrial property law

took a more radical approach than either the Foreign Investment Law or the 1972 Law on Technology Transfer. Though the [1976 Industrial Property] Law . . . [shared] with the other two laws the basic objective of strengthening Mexico's industrial development and economic independence, it [went] further than the other two in restricting ownership rights.<sup>76</sup>

For example, patents were not available for inventions in certain strategic areas;<sup>77</sup> compulsory licenses could be granted when inventions were not used over a certain period of time;<sup>78</sup> and the terms of industrial property rights were considerably shorter than those found in most industrial countries.

70. *Id.*

71. "Technology" was broadly defined to include patents, trademarks, industrial models, designs, plans, technical training, and any other kind of technical assistance. *Ley Sobre el Registro de la Transferencia de Tecnología y el Uso y Explotación de Patentes y Marcas*, D.O., Dec. 30, 1972 [*hereinafter* 1972 Technology Transfer Law] (Law for the Registration of the Transfer of Technology and the Use and Working of Patents and Trademarks).

72. *Id.* at art. 7. The most widely used ground for denial was price. John J. Moss, *1990 Mexican Technology Transfer Regulations*, 27 *STAN. J. INT'L L.* 215, 227 (1990). The 1972 law initiated the denial of agreements for years to come on the basis of excessive royalties.

73. The Mexican government regulated the transfer of technology because it viewed technology as a good, "the importation of which was subject to the principles of import substitution." John J. Moss, *The 1990 Mexican Technology Transfer Regulations*, 27 *STAN. J. INT'L L.* 215, 223 (1990).

74. Philip F. Zeidman & David Cho, *Franchising in Mexico: New Policy, New Outlook*, 1 *MEXICO TRADE AND LAW REPORTER* 9, 9 (1991).

75. *Ley de Invencciones y Marcas*, D.O., Feb. 10, 1976 [*hereinafter* 1976 Industrial Property Law] (Law on Inventions and Trademarks).

76. John J. Moss, *The 1990 Mexican Technology Transfer Regulations*, 27 *STAN. J. INT'L L.* 215, 229.

77. The areas included chemical products, biotechnological products, alloys, and pharmaceuticals. 1976 Industrial Property Law at art. 10.

78. *Id.* at arts. 41-52.



### B. 1982 Transfer of Technology Law

The consequence of the economic policies of the 1970s was a technologically "backward" country in the early 1980s. Compounded by the economic problems of the early 1980s,<sup>79</sup> Mexico "was forced to choose between continued rejection of foreign economic influence, which earned the risk of indefinite domestic economic stagnation, or the revitalization of the economy under the terms set largely by foreign lenders, investors, and consumers."<sup>80</sup> The 1982 Technology Transfer Law<sup>81</sup> was adopted to enable the Mexican government to continue controlling the importation of technology into the country under the auspices of the promotion of technology as the title of the law would indicate.

Under the 1982 Technology Transfer Law, the term "technology" acquired a broader meaning, including trademarks, service marks, trade names, patents, technical assistance, formulae, know-how, copyrights, and computer programs. By including computer programs, service marks, and trade names, the definition in the 1982 Technology Transfer Law was broader than that in the 1972 Technology Transfer Law. Moreover, the types of enterprises covered were extended considerably, including border maquiladoras for the first time. The primary thrust of the 1982 Technology Transfer Law was the requirement that practically all technology transfer agreements be registered with and approved by the National Registry of Transfer of Technology (the registry).<sup>82</sup> Any non-registered technology agreement was considered null and void and, therefore, unenforceable under Mexican law.<sup>83</sup> Technology agreements were subject to minimum standards in order to be registrable and could be denied on the basis of any of the seventeen grounds specified in the 1982 Technology Transfer Law.<sup>84</sup>

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79. When the price of oil collapsed, Mexico defaulted on payment of its foreign debt and found itself unable to continue borrowing for the subsidization of the industrial sector. *Id.*

80. *Id.*

81. Ley para el Control y Registro de la Transferencia de Tecnología y el Uso y Explotación de Patentes y Marcas, D.O., Jan. 11, 1982 [*hereinafter* 1982 Transfer of Technology Law] (Law for the Control and Registration of The Transfer of Technology and the Use and Exploitation of Patents and Marks).

82. 1982 Technology Transfer Law at art. 2. The National Registry of Transfer of Technology, is an office of the Ministry of Commerce and Industrial Development.

83. *Id.*

84. *Id.* at arts. 15-16.

### C. *Technology Transfer Regulations of 1990*

As part of its economic liberalization movement, the Salinas administration published new transfer of technology regulations<sup>85</sup> on January 9, 1990 (1990 technology transfer regulations). These regulations “mark an important juncture in the Mexican government’s transition from import substitution industrialization to more competitive foreign markets.”<sup>86</sup> While the 1990 technology transfer regulations did not fully and totally deregulate the transfer of technology to Mexican individuals or corporations, they made substantial inroads. Although the deregulation applied to technology transfer agreements in general, franchise agreements were singled out in some circumstances for special treatment. For the first time in Mexico’s legislative history, the term “franchise” was defined.<sup>87</sup>

The primary impact of the 1990 Technology Transfer Regulations was its revision of the registration process. This revision has made registration easier and more predictable, thereby reducing the discretion of the governmental authorities and the need for the parties to undertake lengthy negotiations in drafting the agreement prior to registration or in revising the agreement if registration was denied. Exceptions to the registration requirements were clearly stated in the 1990 Technology Transfer Regulations, and the government was forced to base its decisions on those exceptions. These exceptions were stated in terms of their benefit to Mexico and were intended to be construed broadly.<sup>88</sup>

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85. Reglamento de la Ley sobre el Control y Registro de la Transferencia de Tecnología y el Uso y Explotación de Patentes y Marcas, D.O., Jan. 9, 1990 (Regulations for the Law on the Control and Registration of the Transfer of Technology and the Use and Exploitation of Patents and Marks).

86. John J. Moss, *The 1990 Mexican Technology Transfer Regulations*, 27 STAN. J. INT’L L. 215, 215 (1990).

87. Article 23 of the technology transfer regulations defines a franchise agreement as: An agreement whereby Supplier, in addition to licensing the use or the authorization of the exploitation of trademarks, service marks or trade names by Purchaser, transfers technical know-how or technical assistance in accordance with Sections a), f), g) and h) of Article 2 of the [Transfer of Technology] Law for the purpose of producing or selling goods or providing services in a uniform manner and with the same operating, commercial and administrative methods as the Supplier regardless of any other qualifying definition mentioned in said article.

Technology Transfer Regulations at art. 23.

88. John J. Moss, *The 1990 Mexican technology transfer regulations*, 27 STAN. J. INT’L L. 215, 235 (1990). The regulations provided for the following benefits that might be conferred on the country by execution of a certain technology agreement:

Pursuant to a provision in the 1982 Technology Transfer Law, excessive royalties in technology agreements were not permitted by the registry.<sup>89</sup> In a departure from past regulations, no limitations on royalties were stated in the 1990 Technology Transfer Regulations. To the benefit of transferors, including franchisors, the 1990 Technology Transfer Regulations allowed parties to agree on higher royalties without any ceiling price imposed by the registry.<sup>90</sup>

Another important innovation made by the 1990 Technology Transfer Regulations was improvement in the protection of trade secrets. In another departure from the 1982 Technology Transfer Law under which registration would be denied when an agreement required the licensee to maintain confidentiality after the expiration of the agreement,<sup>91</sup> the 1990 Technology Transfer Regulations permitted parties to require post-contract confidentiality under certain circumstances.<sup>92</sup> Additionally, restrictions were relaxed on the ability of the licensor to prohibit the licensee's use of the technology after termination of the contract.<sup>93</sup> Relaxation of these limitations on trade secret protection was essential to promote the transfer of technology from foreigners to Mexicans.

Another innovation established by the 1990 Technology Transfer

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(1) creation of permanent jobs; (2) improvement of the technical qualifications of human resources; (3) access to new foreign markets; (4) manufacture of new products in Mexico, particularly when they substitute for imports; (5) improvement in Mexico's balance of payments; (6) decrease in unit production costs, measured in constant pesos; (7) development of domestic suppliers; (8) use of technologies that do not contribute to sociological deterioration; (9) initiation or development of technological research and development activities in production units or in domestic research centers related thereto.

Technology Transfer Regulations at art. 53.

89. An agreement would be denied by the registry when the royalty fee was "out of proportion with the acquired technology or constitute[d] an unjustified or excessive burden for the national economy or for the acquiring company." 1982 Technology Transfer Law at art. 11.

90. Despite liberalization regarding the amount of royalty payment, royalty income is taxable in Mexico even though such payments are made out of the country. The income tax law of Mexico provides that all royalties and technical assistance fees are considered Mexican source income subject to taxation in Mexico if such royalties and fees are paid for intangible assets (such as patents, drawings, formulas, trade names, and trademarks) used in Mexico. Moreover, it is assumed that such intangible assets were used in Mexico if the licensor is a Mexican company or a foreign corporation with a permanent establishment in Mexico. Such payments are taxable in Mexico through withholdings. Additionally, a licensor must be aware that such payments are subject to U.S. federal income taxation, although they will be eligible for U.S. foreign income tax credit.

91. 1982 Technology Transfer Law at art. 15(XI).

92. 1990 Technology Transfer Regulations at art. 46.

93. *Id.* at art. 45.

Regulations was a simplified registration procedure for multiple-unit franchising. This simplified procedure provided for the registration of a proforma franchise agreement when multiple agreements with the same terms were anticipated. Once a model franchise agreement had been registered with the governmental authorities, the franchisor could enter into further franchise agreements as long as the registration specifications of the model agreement were indicated on subsequent agreements and copies of such were filed with the registry within a certain period of time.<sup>94</sup> Proforma registration was beneficial to the foreign licensor who was assured that the form of subsequent agreements would be fully accepted by the Mexican government.

While the 1990 Technology Transfer Regulations made considerable inroads into the deregulation of the transfer of technology, the restrictive 1982 Technology Transfer Law remained in place as the legal framework underlying the 1990 Technology Regulations. The regulatory roadblocks memorialized in the 1982 Technology Transfer Law caused some to distrust the legality of the liberalized regulations issued in 1990.<sup>95</sup> "The ambiguity surrounding the relationship of the 1990 Technology Transfer Regulations to the 1982 Technology Transfer Law is not a unique phenomenon in Mexican economic policy, but rather reflects historical tension between the dictates of externally financed development and of national autonomy."<sup>96</sup> The 1990 Technology Transfer Regulations were simply a political choice. Although President Salinas had determined to reform the economic structure of Mexico in part by deregulating the obstacles to foreign involvement, he might have been unsuccessful had he tried to amend the 1982 Technology Transfer Law by way of Congress.<sup>97</sup> Therefore, although complete reform was not the result, the 1990 Technology Transfer Regulations can be viewed as having paved the way for the eventual abrogation of the 1982 Technology Transfer Law with the passage of the new Industrial Property Law of 1991.

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94. *Id.* at arts. 24, 26.

95. See John J. Moss, *The 1990 Mexican Technology Transfer Regulations*, 27 STAN. J. INT'L L. 215, 215 (1990) (explaining that the Mexican government viewed technology as a good "the importation of which was subject to the principles of import substitution."); see also John McKnight & Carlos Muggenburg, *Mexico Redoubles Efforts to Attract Foreign Franchisors*, 9 FRANCHISE L. J. 3, 5 (1990).

96. John J. Moss, *The 1990 Mexican Technology Transfer Regulations*, 27 STAN. J. INT'L L. 215, 216 (1990).

97. *Id.* The issue of sovereignty was a delicate one and one that might have sparked a heated debate in Congress had the president promoted the repeal or amendment of the law.

## IV. THE 1991 INDUSTRIAL PROPERTY LAW

The 1991 Industrial Property Law<sup>98</sup> completely overhauled the legal and regulatory framework that stifled technological development in the past. In enacting the new law, the Mexican government demonstrated a keen awareness of the concerns of franchisors and licensors in general and an understanding that adequate protection of industrial property rights is essential to technological development and consequently to economic growth.

A vast improvement over the poor protections provided by the 1976 law, the 1991 law enhances the general protection of patents, trademarks, trade secrets, and other industrial property rights. With respect to patents, protection is now available for inventions in areas previously unpatentable, such as chemical products, pharmaceuticals, and biotechnology products and processes.<sup>99</sup> Moreover, the new law initiates an important exception to the traditional requirement that a patentable invention be novel. Now, disclosure of the invention for any reason within the twelve months prior to filing the patent application does not destroy the novelty of the invention as long as a complete account of the disclosure is included in the patent application.<sup>100</sup> In addition, patents are now valid for twenty years from the date of the patent application, rather than fourteen years from the date on which the patent was granted.<sup>101</sup> Although existing patents will retain the fourteen-year duration provided by the former law, they will be eligible for the longer period upon renewal.<sup>102</sup>

To compliment these improvements in patent protection, the new law introduces protection of utility models<sup>103</sup> and enhances existing protection of industrial designs.<sup>104</sup> Utility models are valid for ten years<sup>105</sup> and industrial designs for fifteen years,<sup>106</sup> both measured from the date of filing. Trade secrets are also, for the first time, given

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98. Ley de Invencciones y Marcas, D.O., Feb. 10, 1976 [*hereinafter* 1976 Industrial Property Law] (Law on Inventions and Trademarks).

99. *Id.* at art. 20.

100. *Id.* at art. 18.

101. *Id.* at art. 23.

102. Ley de Fomento y Protección de la Propiedad Industrial, Transitorios, D.O., June 27, 1991, art. 6 (transitional provisions published with the 1991 Industrial Property Law).

103. 1991 Industrial Property Law at art. 27.

104. *Id.* at art. 31.

105. *Id.* at art. 29.

106. *Id.* at art. 36.

express protection under Mexican law.<sup>107</sup> In order for information falling within the definition of trade secrets to be protected as industrial property, it must be contained in written documents, electronic or magnetic media microfilm, computer discs, or similar media.<sup>108</sup>

Trademark protection has been improved as well. Broadening the scope of trademark protection, the new law allows collective marks (e.g., the "Sunkist" orange producers' mark), certification marks (e.g., the "Good Housekeeping Seal of Approval"), and three dimensional marks. These three types of marks were unrecognized under previous law.<sup>109</sup> In addition, the 1991 Industrial Property Law provides a longer and renewable term, increased from five to ten years.<sup>110</sup> The longer term should alleviate the pitfalls of frequent renewal necessary under the 1976 Industrial Property Law. As with patents, existing registered trademarks will be eligible for the new term of validity upon renewal.<sup>111</sup>

In addition to this general broadening of industrial property protections, the 1991 Industrial Property Law considerably improves the holder's rights with respect to the use of his right. Although the government still has the power of compulsory licensing,<sup>112</sup> the patent holder has one year to start working the invention before a compulsory license will be granted.<sup>113</sup> With regard to trademarks, the new law abolishes the requirement that the holder of a registered trademark submit affidavit proof of use.<sup>114</sup> Moreover, a trademark may no longer be extinguished because it was used in a manner different from

107. Literally translated "industrial secrets" under the new law, trade secrets include information of industrial application which is kept in a confidential manner; relates to the nature, characteristics, or purposes of products, the manufacturing of products, or the distribution of products or services; and provides to the owner an economic or competitive advantage. 1991 Industrial Property Law at art. 82.

108. *Id.* at art. 83.

109. *Id.* at art. 89.

110. The term, however, still runs from the date of application rather than from the date on which the trademark is granted. *Id.* at art. 95. A petition for trademark renewal will be accepted if the trademark is in use and has been used for at least three consecutive years. *Id.* at art. 134.

111. *Id.* at Transitorios, art. 6.

112. 1991 Industrial Property Law at art. 70.

113. *Id.* at arts. 70, 72. Furthermore, the law expressly provides that a compulsory license will not be issued if the holder or licensee has been importing into Mexico a patented product or a product obtained from a patented process. *Id.* at art. 70.

114. 1976 Industrial Property Law at art. 48. However, the new law does provide that the registration of a trademark will lapse if it is not used for three consecutive years and no justifiable reasons exist for its non-use. 1991 Industrial Property Law at art. 130.

that for which it was registered<sup>115</sup> as long as the manner of use does not alter its original distinctive character.<sup>116</sup> However, the linking requirement, insuring the prominent display of a Mexican trademark alongside the foreign trademark, was not repealed and remains optional.<sup>117</sup>

In addition to increasing protection of the different types of industrial property, the Mexican government, in a transitional provision appended to the 1991 Industrial Property Law, abrogated the 1982 Technology Transfer Law and the regulations thereunder with the stroke of a pen.<sup>118</sup> Doing so, the Mexican government removed the transfer and licensing of technology from regulatory review. Although the 1990 Technology Transfer Regulations significantly diminished many of the burdens and frustrations associated with registration of such licenses, as discussed above, the uncertainties about the legal validity of the 1990 Technology Transfer Regulations had a chilling effect on the transfer of technology into Mexico. By repealing the 1982 Technology Transfer Law and 1990 Technology Transfer Regulations, the Salinas administration took one giant step forward with regard to opening up the Mexican economy to the foreign investment that the country so badly needs to improve its competitiveness with the United States and other industrial powers.<sup>119</sup>

In particular, the 1991 Industrial Property Law greatly improves Mexico's attractiveness as an expansion opportunity for U.S. franchisors. Following the example set by the 1990 Technology Transfer Regulations, the 1991 Industrial Property Law specifically defines franchises in article 142. A franchise will exist when technical knowledge or assistance is provided in conjunction with a trademark licensee, allowing the licensee to produce or sell products or services in a uniform manner and with the operational, commercial, and administrative methods established by the owner of the mark for the purpose of preserving the quality, prestige, and image of the products or services distinguished by the mark.<sup>120</sup> All licenses and transfers of

115. *Id.* at art. 115.

116. 1991 Industrial Property Law at art. 128. This article also requires that the trademark be used in Mexico.

117. 1976 Industrial Property Law.

118. 1991 Industrial Property Law, *Transitorios*, art. 2 (II).

119. Jorge Arciniega & Nancy Ramirez, *Mexico's New Industrial Property Law — New Protection for Foreign Investors*, 1 MEXICO TRADE & L. REP. 7, 8 (1991).

120. 1991 Industrial Property Law at art. 142. The definition provided is much clearer

technology, including franchise agreements, must still be registered with the Ministry of Commerce and Industrial Development, but the new law no longer requires that the ministry approve the terms of the agreement.<sup>121</sup> Interestingly, article 142 also requires that the franchisor disclose to the potential franchisee, before execution of the contract, information about the status of his business.<sup>122</sup> The details regarding registration and disclosure will be specified in regulations implementing the law. Although not released yet, the regulations are expected within a few months.

The 1991 Industrial Property Law makes Mexico a more attractive opportunity for expanding businesses. This law offers protection of industrial property rights to a degree comparable to that found in most developed countries. In light of the probable North American Free Trade Agreement, the level of protection of industrial property in Mexico should continue to converge with that enjoyed in the United States. Indeed, "the Law is regarded by Mexico and the rest of the world as an indispensable element to encourage foreign investment and make the North American Free Trade Agreement a meaningful exercise."<sup>123</sup>

## V. CONCLUSION

The recent initiatives taken by President Salinas are testimony to the economic transformation underway in Mexico. There is no need to wait on the full realization of a NAFTA. With the reforms made by the Salinas Administration, Mexico has already made itself a more inviting destination for U.S. investors. A corresponding increase in the level of foreign activity in the country shows no signs of reversal. The walls surrounding the business opportunities in Mexico are rapidly disintegrating and, for the well positioned business, the time for expansion is NOW.

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than that under prior law and considerably broader than the customary definition in the United States. Philip F. Zeidman & David Cho, *Franchising in Mexico: New Policy, New Outlook*, 1 MEXICO TRADE & L. REP. 9, 11 (1991).

121. 1991 Industrial Property Law at arts. 62-63. Registration must be completed in accordance with the regulations implementing the law. *Id.* at art. 64.

122. *Id.* at art. 142.

123. Jorge Arciniega & Nancy Ramirez, *Mexico's New Industrial Property Law — New Protection for Foreign Investors*, 1 MEXICO TRADE & L. REP. 7, 7 (1991).