

Alert | Regulatory & Administrative Law



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Mexican Government Deems Agreement on Projects, Works of Public Interest and National Security

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On Nov. 22, 2021, Mexico’s Executive Branch published an agreement, effective immediately, in the Federal Official Gazette instructing the agencies and entities of the Federal Public Administration to execute the indicated actions in relation to the Mexican government’s projects and works considered of public interest and national security, as well as critical and strategic for national development (hereinafter “Agreement”).

Scope

The Agreement establishes that the execution of projects and public works will be considered of public interest and national security. Therefore, the Mexican government will oversee the execution of projects and works in the following sectors: telecommunications and infrastructure, customs, border, hydraulic, hydric, environmental, tourism, health, railways, railroads in all their modalities, energy, ports, airports, and all others that due to their purpose, characteristics, nature, complexity, and magnitude are considered strategic for national development.

Obligated Subjects

The Agreement instructs Federal Public Administration agencies and entities to grant a provisional authorization for the initiation of projects or works related to any of the aforementioned sectors.

- a. **Provisional Authorizations:** The provisional authorizations mentioned in the Agreement will be granted by the agencies and entities of the Federal Public Administration when the request is submitted, having obtained the required permits, licenses, or any other documents for the execution of projects in any of the above-mentioned sectors.
- b. **Term:** Provisional authorizations will be granted within a period of no longer than five business days following submission of the request. If the authority or agency does not respond within the five-business-day term, the provisional authorization will be deemed granted.
- c. **Validity:** Provisional authorizations will be in full force and effect for 12 months from their issuance date, during which time the authorized person or entity will begin the process of obtaining a definitive authorization.

Mexican Bar Association Position

On Nov. 23, 2021, the Mexican Bar Association (*Barra Mexicana, Colegio de Abogados A.C.*) publicly called for annulment of the Agreement, arguing it is illegal and harmful for the Mexican Government to declare all projects in the aforementioned sectors matters of public interest and national security.

Mexico's Economic Competition Commission

On Nov. 24, Mexico's Federal Economic Competition Commission (COFECE) warned of the Agreement's risks to market competition. COFECE argues that granting Provisional Authorizations is contrary to the applicable laws in matters regulated by the Agreement. In addition, COFECE considers that the granting of said Provisional Authorizations, as well as their acceptance by default (after the five business days), could result in asymmetric and preferential treatment for public and private projects.

Further, COFECE maintains that notwithstanding a project's classification as relating to public interest and national security, its related projects would not be exempt from the bidding procedures in accordance with the Public Procurement Law (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*) and the Public Works and Related Services Law (*Ley de Obras Públicas y Servicios Relacionados con las Mismas*).

Therefore, COFECE contends that public bidding processes should be prioritized, in order for the State to be able to obtain the best contracting conditions.

** This GT Alert is not applicable to matters or laws in the United States, or to other jurisdictions outside of Mexico.*

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