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Mexico's "CFIUS Moment"? New Foreign Investment Screening Proposal Could Reshape Cross-Border M&A

On August 30, 2026, the Mexican federal Executive transmitted to the Senate an initiative, signed by President Claudia Sheinbaum on August 28, to amend Mexico's Foreign Investment Law (*Ley de Inversión Extranjera*, the "FIL"). If enacted substantially as proposed, it would create Mexico's first structured national-security screening regime under the FIL: acquisitions giving foreign investment more than 49% of a Mexican company that exceeds an asset threshold and operates in a designated sensitive sector would require a favorable resolution of the National Foreign Investment Commission (CNIE) before the stake may be acquired. The process could span up to approximately 120 business days including suspensions, may end in mitigation conditions or outright prohibition, would carry substantial fines and (in a marked departure from the FIL's existing deemed-approval rule for CNIE filings) would treat the Commission's silence as a denial.

For dealmakers, the significance is immediate. National-security clearance would become an additional regulatory approval requirement and, for covered deals, a distinct condition precedent to closing (alongside merger control and existing FIL approvals), with direct consequences for deal certainty, timing, long-stop dates, efforts covenants and risk allocation.

What is genuinely new is not the power itself. Article 30 of the current FIL already allows the CNIE, "for national-security reasons," to prevent acquisitions by foreign investment, a single sentence with no procedure, criteria or timeline. The initiative would repeal that provision and replace it with a formal regime: defined triggers, enumerated sectors, statutory deadlines and a fixed set of outcomes. The proposal is not yet law and may change materially in Congress. But its architecture, and its gaps, merit attention now.

From a One-Sentence Power to a Structured Regime

Mexico already screens large foreign acquisitions on economic grounds: under existing Article 9, foreign investment may exceed 49% of a Mexican company whose assets exceed a CNIE-set annual threshold only with the Commission's prior approval. The initiative borrows that architecture (a greater-than-49% trigger combined with an asset threshold) and grafts onto it a dedicated national-security track, housed in a new Title Six Bis (Articles 30 Bis through 30 Sexties) with its own procedural rules. The existing Article 30 would be repealed.

The Jurisdictional Test: Proposed Article 30 Bis

Under proposed Article 30 Bis, a favorable CNIE resolution would be required where three cumulative conditions are met: foreign investment would come to participate, directly or indirectly, in more than 49% of the capital stock of a Mexican company; the company's total assets at the time of filing exceed a monetary threshold to be set by the CNIE by general resolution; and its economic activity falls within a listed sensitive sector.

The sensitive sectors comprise four enumerated categories: strategic infrastructure, physical or virtual, across energy, transport, health, communications, mining, data processing or storage, digital systems, aerospace, defense and sensitive installations, including real estate indispensable to its use; critical technologies and dual-use products, from artificial intelligence, robotics and semiconductors to cybersecurity, energy storage, quantum, nuclear, nano- and biotechnology; the supply of fundamental inputs, particularly energy and raw materials, and food security; and access to, or control over, sensitive information, particularly personal data. A catch-all permits the CNIE to add "analogous" activities by general resolution.

The list will be familiar to European practitioners: it closely tracks the screening factors in Article 4 of Regulation (EU) 2019/452—the EU framework currently applicable, scheduled to be replaced by the recently adopted Regulation (EU) 2026/1386 from January 17, 2028—combined here with a mandatory, suspensory pre-closing authorization. The result is breadth: businesses in health, mining, data, fintech or logistics could be covered where strategic infrastructure, critical inputs or sensitive information is involved, well beyond traditional defense assets.

Two features narrow the regime: where the target falls below the asset threshold but foreign participation would still exceed 49%, filing would be voluntary rather than mandatory; and because the three conditions are cumulative, this is not a universal screen: mandatory jurisdiction requires a majority-level equity stake, a target of sufficient size and a sensitive activity, all at once.

A Security-Focused Commission

The initiative would materially rebalance the CNIE. The Secretaries of National Defense, the Navy, and Security and Citizen Protection would become full voting members; in sessions on national-security matters, the heads of the Attorney General's Office, the National Intelligence Center, the Tax Administration Service (SAT) and the Financial Intelligence Unit (UIF) would participate as permanent invitees with voice but no vote. The Commission could convene extraordinary sessions at any time, members could not abstain on national-security votes, and the Commission's Executive Secretary would report semi-annually to Congress on its national-security work.

The explanatory memorandum is explicit that this coordination is intended to give investment review a specialized security focus, and that potential crimes or administrative violations identified in the process may be referred to the competent authorities. For foreign investors, the Commission's composition matters as much as the legal test: investors should anticipate potential scrutiny of ultimate beneficial ownership, source of funds, government affiliations, tax posture and anti-money-laundering history by authorities focused on security, enforcement and financial intelligence rather than investment promotion.

The Review Process

The filing would be submitted jointly by the Mexican target and the foreign investor to the Commission's Technical Secretariat. The CNIE would have 60 business days to resolve, extendable once by up to 30 additional business days where complexity justifies it. Within the first 20 business days it could suspend the review once by requesting additional information, giving the parties five to 30 business days (as fixed by the Commission) to respond; failure to respond results in dismissal. Taking the decision period, the extension and the suspension together, total elapsed time could approach approximately 120 business days, roughly six months.

Most notably, if the Commission fails to resolve within the applicable periods, the application is deemed denied. Negative administrative silence is not itself unusual in Mexican federal administrative law, but it marks a significant departure from the FIL's own rule: the deemed-approval regime (*afirmativa ficta*) that currently governs CNIE applications would be preserved only for filings under Articles 8 and 9.

Three Outcomes (and Conditions Even on Clearance)

The Commission would resolve in one of three ways: clearance, where no national-security risk is found; conditional clearance, requiring modifications to mitigate the identified risk; or prohibition. Notably, the text provides that resolutions in the first two categories will include case-specific terms and conditions, which may involve periodic reporting and evaluation of compliance with Mexican law, so even a clearance may carry ongoing obligations. The FIL's existing instruction that the Commission may impose only requirements that do not distort international trade would remain on the books, an untested constraint in the security context.

Sanctions

The initiative modernizes the FIL's fine schedule (from minimum wages to the *Unidad de Medida y Actualización*, or UMA) and adds two heavyweight provisions: a fine of 5,000 to 200,000 times the daily UMA (up to approximately MXN 23.5 million at the 2026 UMA) on the Mexican company that transfers the shareholding despite a denial or without the required resolution, and the same range, without specifying on whom it would be imposed, for breach of mitigation measures. The heaviest new fine thus falls on the Mexican transferor; the acquiring investor's closing without approval appears to remain subject to the existing, far lower general fine of 1,000 to 5,000 UMA. The provision also appears awkwardly drafted for conventional secondary sales: it fines the "Mexican company" that transfers the shareholding, without making clear whether that means the target (as elsewhere in the new title) or a Mexican selling shareholder; in a typical secondary acquisition the target itself transfers nothing, leaving uncertain how the enhanced penalty would apply to ordinary M&A structures. The initiative creates no express divestiture or unwinding mechanism for a non-cleared acquisition. But existing Article

37 of the FIL, untouched by the initiative, permits the Ministry of Economy to revoke authorizations when acts are carried out in violation of the Law, and provides that acts, agreements, corporate arrangements or bylaw provisions the Ministry declares null for violating the Law produce no legal effects between the parties or against third parties. Whether those powers would reach a consummated acquisition completed without national-security clearance is not expressly resolved and remains an open enforcement question.

Mexico's CFIUS Moment (With Material Differences)

The analogy with the Committee on Foreign Investment in the United States (CFIUS) is commercially useful and, in three respects, apt: an interagency, security-driven review of inbound investment; negotiated mitigation; and a framework capable of blocking transactions. But the differences are just as instructive.

First, jurisdiction turns on a bright line: more than 49% of capital stock. Unlike the U.S. framework (which reaches any acquisition of control and, for critical technology, critical infrastructure and sensitive-data businesses, certain non-controlling investments with defined governance or information rights), the Mexican proposal does not expressly reach minority investments, however extensive the investor's rights. A 49% stake with board and veto rights in a semiconductor business would, without more, sit outside the mandatory regime; a 50.1% acquisition of the same business would require clearance if the target also exceeds the applicable asset threshold. Percentage ownership is an imperfect proxy for influence.

Second, there is no express call-in power: the text does not authorize the Commission to initiate review of a transaction the parties did not notify, nor does it articulate a post-closing divestiture regime of the kind familiar from the U.S. and U.K. frameworks. As drafted, post-closing enforcement rests on fines and on the unresolved reach of existing Article 37.

Third, the asset threshold applies even in the most sensitive sectors. A small but strategically significant AI, cybersecurity or biotech company could fall below the threshold and outside mandatory review, precisely the category of target that most screening regimes capture without regard to size.

Finally, the silence-as-denial rule has no CFIUS parallel: delay alone can defeat a transaction.

Open Questions the Text Does Not Resolve

Several issues are left to implementing regulations, CNIE resolutions or future practice, and should be read as open questions rather than settled consequences. On jurisdictional scope: the statute applies to indirect participation, and the FIL defines "foreign investment" broadly, so a foreign-to-foreign transaction shifting control above a Mexican subsidiary could arguably be covered, but the initiative does not say how such global deals would be identified, filed or reviewed. And because the trigger is framed by foreign investment's aggregate participation (as under Article 9), an incremental purchase tipping total foreign ownership above 49% appears to be caught; what remains unclear is how indirect holdings, affiliated vehicles, options, convertibles and concert parties would be aggregated. Nor does it specify how assets are valued: book or market, Mexican entity or consolidated group.

On procedure: the joint-filing requirement assumes a cooperative target and provides no unilateral path, which could create a meaningful execution obstacle in hostile or contested transactions unless Congress or the implementing rules provide a unilateral filing mechanism. A voluntary filer below the asset threshold would appear to face the same *negativa ficta* rule: inaction would convert a voluntary filing into a deemed denial, a disincentive unless clarified. Read literally, the voluntary-filing paragraph also does not restate the sensitive-sector condition, leaving its precise scope open. The initiative also does not specify how an Article 30 Bis review would interact with an Article 9 filing where the same transaction triggers both regimes, including whether separate applications and resolutions would be required, or how the differing review periods and deemed-approval and deemed-denial rules would be coordinated. And the scope of permissible mitigation ("modification of the project") is undefined.

The transition raises its own issue: the decree would enter into force the day after publication, repealing Article 30 immediately, while the CNIE would have up to 180 calendar days to publish the asset threshold on which mandatory jurisdiction depends, and the decree sets no deadline for the conforming amendments to the FIL regulations on which the new procedure would rely. Until the threshold is published, the scope of mandatory jurisdiction could not be determined with certainty, while the existing Article 30 power would already have been repealed; the treatment of transactions signed or pending in that window is not addressed. Congress or the regulations could readily cure these gaps; parties should watch whether they do.

USMCA Considerations

For U.S. and Canadian investors, Mexico's Annex I reservation under the United States–Mexico–Canada Agreement (USMCA) preserves CNIE screening of acquisitions under Article 9 of the FIL, but only above a negotiated threshold (US$955.835 million at entry into force, adjusted annually for nominal GDP growth). Article 30 Bis would constitute a new measure distinct from Article 9 and could raise questions under Mexico's USMCA investment commitments, particularly if the CNIE sets an asset threshold below the Article 9 threshold reflected in Mexico's Annex I reservation. Mexico could be expected to rely principally on the agreement's essential-security exception, although the scope and application of that exception to the proposed regime would require transaction-specific analysis. Investors should not assume treaty protections will exempt them from filing: treaty remedies, if available, would generally not provide practical pre-closing deal certainty. The initiative is country-of-origin neutral among foreign investors: it contains no country-specific restrictions or differentiated treatment based on the foreign investor's nationality.

Practical Implications for M&A

For transactions potentially in scope, parties should expect CNIE national-security approval to be negotiated as a standalone condition precedent, with attention to the standard of efforts required to obtain it; the extent to which the buyer must accept mitigation (from hell-or-high-water formulations to defined materiality limits); cooperation and information-sharing covenants adequate to a joint filing; long-stop dates sized to a review that can lawfully run six months; and termination rights (potentially reverse termination fees) addressing denial, deemed denial or unacceptable conditions. In auctions, a bidder's ownership structure and security profile will become a component of deal certainty and therefore of price, and sellers can be expected to diligence bidders accordingly. Buyers should extend regulatory due diligence to the sector characterization and asset values of Mexican targets and, in global transactions, of Mexican subsidiaries whose indirect change of control could attract scrutiny, where filing strategy or local carve-out structures may need consideration.

What Foreign Investors and Dealmakers Should Do Now

- Map exposure: screen current portfolios and pipeline transactions against the three-part test (stake above 49%, sensitive sector, likely asset size), remembering that the categories reach strategic infrastructure, critical inputs and sensitive data in sectors from health and mining to food, not only defense.
- Do not delay deals for the proposal alone; it remains subject to congressional consideration. But for transactions unlikely to close before enactment, build conditionality and timing flexibility now.
- For global acquisitions with Mexican subsidiaries, assess the indirect-acquisition question early and follow how the final text and regulations resolve it.
- Assemble a CFIUS-style readiness file: ultimate beneficial ownership, source of funds, government affiliations, sanctions and AML profile, and Mexican tax posture, anticipating scrutiny by security and financial-intelligence agencies.
- Update SPA and auction templates to address a CNIE national-security condition, efforts standards, mitigation risk allocation and long-stop mechanics.
- Monitor the legislative process, the transitional provisions, the implementing regulations and, above all, the CNIE general resolution setting the asset threshold, which will define the regime's real-world reach.

The Bottom Line

Mexico is not acquiring the power to block foreign acquisitions: it has had that power, on paper, since 1993. It is proposing to institutionalize it. If the initiative passes, national-security review will move from a bare, one-sentence statutory power to a scheduled, staffed and enforceable step between signing and closing for above-49% acquisitions of sensitive Mexican businesses exceeding the applicable asset threshold, run by a commission where security agencies hold seats and silence means no. Its reach will turn on an asset threshold that does not yet exist, and its gaps (minority stakes, hostile deals, call-in powers) will shape transaction strategy. Investors and deal counsel who plan, price and paper for it from day one will hold the advantage when it arrives.

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If you would like to discuss how the proposed regime could affect a pending or contemplated transaction, please contact any member of our Mergers & Acquisitions or Foreign Investment practices.

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