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Construction Law 2022

Mexico: Trends & Developments

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Trends and Developments

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COVID-19: Impact in the Mexican Construction Industry

In Mexico, as in other countries, the COVID-19 pandemic has had a significant impact across diverse industries, including the construction industry. According to the Mexican Chamber of the Construction Industry (*Cámara Mexicana de la Industria de la Construcción*), in 2020 activity in the construction industry decreased by 8.1% in comparison with 2019. Fortunately, during 2021 it grew by 9.5% compared with 2020 and is expected to grow by an additional 10% during 2022.

The impact on construction that resulted from the COVID-19 pandemic has varied across Mexico; consequently, different jurisdictions have adopted different measures to incentivise it. For example, on 4 August 2021, Mexico City's government enacted a series of resolutions by means of which certain construction projects, such as low-income housing, schools, hospitals and health institutions, would benefit from administrative measures aimed at reducing the time of processing and issuing permits so that construction works could begin sooner.

It seems that COVID-19 did initially reduce the demand for office space and, therefore, has pushed developers, investors and local authorities to rethink the use of office and retail spaces in the country. On 4 August 2021 and 22 March 2022, Mexico City's government enacted resolutions by means of which office and retail spaces that existed before the COVID-19 emergency (ie, 31 March 2020) in specific areas (eg, popular Mexico City neighborhoods, such as Polanco, Santa Fe, the Reforma corridor and Centro),

could be reconverted and used as residential developments after completing and complying with certain terms and conditions. These resolutions are intended to promote construction works and reactivate the residential market in Mexico City. The reversion process will be in force until 31 December 2024.

According to Mexico City's Ministry of Urban Development and Housing (*Secretaría de Desarrollo Urbano y Vivienda de la Ciudad de México*), by the end of March 2022, Mexico City's government had already authorised nine construction projects, equivalent to 50,000 square metres of construction area and approximately 750 residential units. Additionally, mixed-use buildings are also trending within Mexico City's construction industry, a trend that has increased after the COVID-19 pandemic. In order to incentivise construction activities, therefore, during 2021 Mexico City's government approved 17 mixed-use projects to be built in Mexico City's renowned Reforma Avenue. These are expected to improve the infrastructure of the area and provide services to the neighboring population.

Labour Law Amendments Impacting the Construction Industry

Collective labour reforms

In May 2019, the Mexican Federal Labour Law ("Labour Law") was amended on various matters, including key modifications to labour relationships ("Labour Reform"), which had an impact on the Mexican construction industry. Other modifications are scheduled to become effective between now and May 2023. The Labor Reform law includes the following.

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- A “Federal Labour Conciliation and Registration Centre” was created. This authority is now in charge of the registration of all collective bargaining agreements, internal workplace regulations and unions. It is also responsible for conciliatory procedures at the federal level.
- A new model of union representation was implemented, seeking to guarantee the right of employees to a personal, free, direct and confidential vote on union directives.
- A “Representativeness Certificate” was created, which is an essential requirement for unions seeking to (i) enter into a collective bargaining agreement or (ii) issue a strike call in order to achieve the execution of a collective bargaining agreement.
- A new requirement to renew collective bargaining agreements was included, consisting of having the majority of employees covered by the agreement approve the content of the corresponding renewal.
- New requirements were set forth in order to exercise the right to call for a strike. This aims to eliminate “strike calls” by unions that do not represent a sufficient number of employees of the relevant workplace.

Subcontracting Reform

In April 2021, a Subcontracting Reform was adopted to modify, add to or suppress certain provisions of several labour, social security and tax-related laws. The purpose is to prohibit the subcontracting of personnel in Mexico, defined as the act whereby “an individual or an entity provides its own employees or puts them at the disposition of another party”.

The exceptions to such prohibition are (i) the rendering of specialised services which are not part of the corporate purpose or the main economic activity of the beneficiary of such services (such as construction services); and (ii) the provision of

shared services between companies of the same corporate group.

The ability to provide such specialised or shared services is subject to the service providers meeting specific requirements, including registration with the Mexican Labour Ministry and reporting their duties to social security agencies.

In August 2021, the Mexican Labour Ministry published a set of guidelines which include the said authority’s interpretation of the applicability of the Subcontracting Reform to specific cases.

The guidelines suggest that it shall be construed that the provisions of the Subcontracting Reform (including the obligation to comply with the specific requirements in connection with specialised services) apply in those cases where employees of one person provide specialised services in the facilities of another. The Subcontracting Reform came into effect on 1 September 2021, the date as of which all companies operating in Mexico were to be in compliance with the new regulations.

In view of the foregoing, all construction companies and other contractors providing specialised services in construction projects and developments are now bound to be registered with the Mexican Labour Ministry as a specialised service provider to be able to provide services under the construction agreements.

In cases where the construction companies and/or other construction-related contractors fail to comply with the Subcontracting Reform provisions, the contractors and the owner of the construction could be subject to economic penalties issued by the labour authorities. Additionally, construction companies (as providers of specialised services) which fail to deliver the information required by social security or tax laws and regulations may be subject to economic penalties.

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In particular, a sanction for not complying with the Subcontracting Reform is that all payments made with regard to unauthorised subcontracting of personnel would not be tax deductible and any value added tax associated with payments related to subcontracting of personnel would not be accredited.

In view of the foregoing, it is highly recommended that construction companies confirm that they are compliant with the new provisions of the Subcontracting Reform. Also, that those entities retaining the services of a construction company or construction contractors (including owners or developers of real estate projects) confirm that the contractors are in compliance with the new regulations of the Subcontracting Reform.

Hurdles to Building and Developing in Mexico

Certain hurdles need to be overcome by developers and construction companies in Mexico.

Required permits and obtainment process

Construction is a highly regulated activity in Mexico. Municipal regulations usually require companies to obtain several permits prior to initiating construction activities at the municipal, state or federal level.

In most municipalities throughout Mexico, prior to obtaining a construction licence the contractor is required to hold a land-use licence, an alignment and official number licence (ie, a licence providing the official address of the property and construction restrictions), an environmental impact authorisation, an urban impact authorisation and a water supply feasibility certificate. Obtaining these permits should be straightforward; however, in most cases the authorities do not issue the permits within the specified legal timeframes. In our experience, the process can take up to 18 months, and some permits may be prerequisites for obtaining others.

Utilities

Water and energy could be considered the most important utilities required for construction activities as well as for the long-term operation of real estate projects. Unfortunately, water and energy are scarce in some regions of Mexico. Therefore, obtaining water and energy supply feasibility certificates can be complicated.

In regard to energy supply, during the past year several news outlets have reported that the lack of an energy transmission and supply infrastructure has affected the construction and opening of real estate projects (including industrial parks) in Mexico. The most recent changes implemented by the current administration regarding, among others, self-supply power contracts and transmission costs for power generators to use the public network have not only affected the renewable energy market but have also made developers across all industries become more cautious in ensuring the power required to build and operate a facility (regardless of its asset class) is ready and available in any location.

Securing such rights, preferably during the development phase of the real estate project, is a hurdle that needs to be taken into consideration early in any project's development.

With regard to water supply, the laws and regulations state that constructors and developers may only use recycled or treated water during the construction period. However, once the project is concluded, potable water is required for operations at the site. Consequently, project developers are seeking the opportunity to obtain water concession titles that would permit developers to extract water from superficial or underground bodies of water and also be able to provide the project users with the amount of water they require.

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Nonetheless, as mentioned above, water availability is scarce in some regions of Mexico. Therefore, in cases where a water concession is not granted the water supply needs to be obtained from local water supply entities.

Recently, we have seen development and construction companies looking for local partners, whether landowners or development entities requiring investment, that are used to dealing with these types of obstacles and have specific know-how on how to overcome them.

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is widely recognised as one of the premier law firms in Mexico, with more than 85 years of experience in providing unparalleled client service based on its technical excellence and knowledge of the market. The firm's leading areas of practice are real estate, M&A, finance and capital markets, as well as a wide array of other practice areas. The firm has a unique team of attorneys that can anticipate and resolve issues and efficiently achieve clients' legal and busi-

ness goals. The firm's real estate practice group advises multinational and domestic developers, promoters, tourism and hospitality companies and investors (including international real estate funds, Mexican CKDs, CERPIs and FIBRAs). The firm's lawyers are experts in the Mexican legal and regulatory aspects of direct or structured investments and strategic acquisitions of real property in the industrial, retail, commercial, tourism and leisure, residential and urban sectors.

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