

Mexico's Dispute Settlement Adoption Brings Investors Certainty

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- Investment dispute resolution mechanism brings certainty to investment in Mexico, analysts say
- Ratification cements foreign energy investment in Mexico amid fears of rollback by Lopez Obrador

Mexico's ratification of an investor-state dispute settlement convention brings more certainty to those seeking to invest in Mexico, analysts told Bloomberg Law.

The Mexican government agreed that ratification of the International Center for Settlement of Investment Disputes (ICSID) convention will strengthen Mexico's position as "a safe, trustworthy and attractive destination for investment" while giving "greater certainty" to foreign investors.

The ICSID ratification serves as an additional layer to Mexico's interest in investment dispute resolution mechanisms, James Jones, a former U.S. ambassador to Mexico, told Bloomberg Law July 31.

Mexico recognizes "that in order to attract investment to improve the quality of the economy and lives in Mexico, they need to have those mechanisms that allow aggrieved investors to have the means of settling [disputes]," Jones, chairman of Monarch Global Strategies, said.

The Mexican government July 27 ratified the ICSID convention, administered by the World Bank Group. Mexico will be part of the convention starting Aug. 26.

The ICSID ratification came amid uncertainty over renegotiations of the North American Free Trade Agreement between the U.S. and Mexico. ICSID is one of three arbitration mechanisms available to investors under NAFTA's Chapter 11, an investment dispute resolution component. The U.S. has called for making Chapter 11 non-binding, and Canada and Mexico have so far resisted that proposal in NAFTA talks.

U.S. Trade Representative Robert Lighthizer has said ICSID, which the U.S. and Canada are part of, is "offensive," as non-elected, non-Americans make decisions related to U.S. law through the convention.

Keeping Energy Investments

The ICSID ratification came in the wake of the election of Mexico's President-elect Andres Manuel Lopez Obrador, who ran on a populist platform. López Obrador opposed the 2013 energy reform plan that allows foreign companies to drill for oil in Mexico—after a longstanding government oil monopoly.

López Obrador eventually softened his approach on foreign energy investment in Mexico in his second presidential bid. But the ratification of ICSID may signal the outgoing Enrique Peña Nieto administration's drive to secure the energy investments already in place, anticipating the possibility of the incoming administration rolling back the reform, Duncan Wood, director of the Wilson Center's Mexico Institute, told Bloomberg Law July 31.

"It's a measure by the outgoing administration to try to provide some protection, some way of assurance to investors, to make sure that Mexico continues to attract money," Wood said.

Mexican Economy Minister Ildefonso Guajardo signed the ICSID convention in January, and the Mexican Senate approved it in May.

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