

# Agribusiness 2021

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Breia L Schleuss**

Faegre Baker Daniels LLP

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Lexology Getting The Deal Through is delighted to publish the fifth edition of *Agribusiness*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Sarah L Brew, Jacob D Bylund, John P Mandler and Breia L Schleuss of Faegre Baker Daniels LLP for their continued assistance with this volume.



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# Mexico

Eduardo Arana Ramirez and Yolanda Aguirre Fuentes

OLIVARES

## OVERVIEW

### Regulation

#### 1 | What is the regulatory environment for meat and poultry?

Mexico has fairly broad regulations when it comes to animals and products derived from them, including meat and poultry. There are regulations on ensuring animal welfare (ie, the diagnosis, prevention, control and eradication of diseases and pests that could affect them), good livestock practices applicable in the primary production and processing of goods of animal origin for human use, and slaughterhouses and slaughter units.

There is also strict regulation regarding the chemical, pharmaceutical, biological and food products that are used on or consumed by animals.

Specific laws and Mexican Official Standards are applicable when dealing with genetically modified organisms, and imports and exports related to animals and goods obtained from them.

The Federal Law on Animal Health, Mexican Official Standards and regulations cover all the aforementioned activities. The National Service for Agri-food Health, Safety and Quality (SENASICA) and the Federal Commission for Protection Against Sanitary Risks (COFEPRIS) are in charge of enforcing these regulations.

In general, the regulations for meat and poultry apply at the federal level, although some state and county faculties exist.

#### 2 | What is the regulatory environment for all other human food?

The definition of 'all other human food' should also include agricultural products, such as seeds, plants, fruits, vegetables and processed food. In general terms, the regulatory environment is very similar to, and in some cases is the same as, that applicable to meat and poultry, as the regulation must cover the entire production chain, from harvest or manufacture to distribution to the population. Therefore, when referring to all human food, three federal authorities must be highlighted:

- SENASICA;
- COFEPRIS; and
- the National Service for Seed Inspection and Certification, which is dedicated to the regulation and surveillance of plant varieties and seeds.

### Relevant organisations

#### 3 | What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

In Mexico, there are several non-profit organisations that focus on different industrial sectors and economic activities of high importance for economic development. In agribusiness, there are chambers and

associations that promote and defend producers' interests over their products that have been obtained from agriculture, aquaculture and livestock, such as:

- the National Confederation of Livestock Organisations;
- the National Chamber of Milk Industries;
- the Mexican Beef Exporters Association;
- the National Chamber of Fisheries and Aquaculture Industries;
- the National Council of Manufacturers of Balanced Food and Animal Nutrition; and
- the Mexican Association of Higher Agricultural Education (AMEAS).

AMEAS gathers all institutions, universities, faculties and schools of higher agricultural education that teach undergraduate and postgraduate academic programmes in agronomics, forestry and agribusiness, among other rural development sciences.

## LAND ACQUISITION AND USE

### Legislation

#### 4 | Identify and summarise the enacted legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

According to the Constitution, the nation is the original owner of the land and natural resources. It can pass ownership to individuals to form either private or ejido land, which is land distributed to farmers and indigenous people after the Mexican revolution, and common land managed by a rural collective.

Private property involves individuals and private companies, both Mexicans and foreign nationals. There are special regulations to follow depending on the type of ownership, acquisition and nationality.

Agricultural property transactions regarding ejido land, such as the acquisition of ownership, where the land becomes private property, are regulated under the Agrarian Law. The ownership of common land cannot be transferred and become private property.

The remaining transactions and transfers of private agricultural land are not restricted and are regulated by the Federal Civil Code or the civil code of each Mexican state.

When acquiring or selling farmland, either private or ejido, the parties involved must comply with the laws regarding the Public Registries of Property and the Tax Code to fulfil and cover the property transfer payments.

With regard to conservation, drainage and fences on agricultural land, specific regulations are found in the Federal Civil Code, the local civil codes, and, when in relation to ejido land, the Agrarian Law. Under that legislation, individuals and legal entities can obtain usage rights of the agricultural land, such as usufruct and easement agreements.

## Non-agricultural land rules

### 5 | Outline any rules related to use of farmland for non-agricultural uses.

The federal and local civil codes for private property of farmland do not prohibit use of the land for non-agricultural activities. However, they make a distinction between the lease of land property for residential use and the lease of farmland. This implies that there are different rules for those contracts (ie, the parties could agree on prohibiting the use of the farmland for non-agricultural purposes).

As for ejido land, the Agrarian Law divides it into three categories:

- land for human settlement: area needed for development of community life in the ejido;
- common use land: the area constituting the economic sustenance of the ejido's community life and made up of land that is not for human settlement or parcelled land; and
- parcelled land: its exploitation, use and usufruct are reserved for the title holders.

Based on the foregoing, limitations can be established regarding the use that is given to common land; for example, in accordance with an express decision by the members of the ejido, the land may only be used for agricultural activities.

Finally, the members of the ejido may transfer the ownership of the common land to commercial or civil entities as long as it is shown that this would bring a benefit to the human settlement of the ejido.

## Lending

### 6 | What special rules are important to agricultural lending in your jurisdiction?

The government, together with private institutions, has promoted the development of the rural, agricultural, forestry and fishing sectors through financial intermediaries and specialised companies by granting credits, loans and guarantees, and providing training and technical assistance to people dedicated to agribusiness.

Among the financial public entities that work jointly with private institutions are the Trust Funds for Rural Development and the National Financial for Agricultural, Rural, Forestry and Fisheries Development, which seek to support members of the sector from primary production to product marketing. However, any loans or credit implies a risk, which is much higher within the agribusiness sector since the goods and products involved, by their nature, are more exposed to damage or disappearance.

Therefore, to grant a credit or loan, the aforementioned public institutions have established a requirement for the interested party to provide a guarantee in favour of the institution, the most common being a pledge or a mortgage, depending on what will be given (tangible movable item or real estate).

The document stating that the pledge or mortgage was constituted must be registered in the Public Property Registry for it to be considered valid. Once the applicant for the credit or loan has paid it in full, the financial institution must issue a document that will serve to cancel the pledge or mortgage.

## Publicly controlled property

### 7 | Describe any rules relating to public control of farm property in your jurisdiction. What enacted legislation governs them?

## Expropriation

The Constitution establishes a procedure known as expropriation, which allows both the federal and state governments to regain control over private properties to make them available for public use. However, this

procedure or legal tool can only be carried out if it is shown that a public utility will be established and if compensation is provided to the owner of the property that is to be expropriated.

As farmland can either be private or ejido land, expropriation is governed by the Expropriation Law and the Agrarian Law, depending on the type of property the government wants to regain control of.

As mentioned above, expropriation can only take place when the property will become a public utility. According to the Expropriation Law, this includes, among other things:

- the establishment, exploitation or conservation of a public service;
- the opening, construction, expansion or alignment of streets, roads, bridges and tunnels;
- the construction of hospitals, schools, parks, gardens, sports or landing fields and government buildings;
- the conservation of places of panoramic beauty, antiques and art objects, archaeological or historical buildings and monuments; and
- the conservation, development or use of susceptible natural elements of exploitation.

The points above apply to private and ejido property. The Agrarian Law provides more detail on the public utilities that can justify expropriation:

- carrying out actions for urban and ecological planning, as well as the creation and expansion of areas for urban development, housing, industry and tourism;
- carrying out actions to promote the development and conservation of agriculture, forestry and fishing resources; and
- exploitation of natural resources, such as gas and oil.

Regardless of the nature of the property (whether private or ejido), the price cannot be less than the tax value registered in the rateable or collector offices and it will be set either by the Institute of Administration and Appraisals of National Assets (INDAABIN), credit institutions, public brokers or professionals with a postgraduate degree in valuation.

## Extinction of ownership

In 2019, the National Law of Ownership Extinction came into force, under which the federal government is empowered to remove a person's assets, which means that person will lose his or her rights over the assets without compensation of any kind, if the assets are suspected of being of illicit origin or of being used for criminal purposes.

For example: person A buys a house from person B. After a few years, person A is served a notice by the authority, informing him or her that person B is accused of drug trafficking, that it is presumed that person B bought the house with illegally obtained resources and that, as a consequence, the government is initiating the extinction of ownership procedure. Person A then has 30 days to leave the house.

## Foreign ownership restrictions

### 8 | Are there any restrictions on foreign ownership of farm property in your jurisdiction? What enacted legislation governs them?

According to the Constitution, the general rule is that only Mexicans, either individuals or entities, can acquire ownership of the land and water and obtain exploitation concessions for mines and water. Nevertheless, foreigners can acquire real estate if they expressly renounce it to the protection of their jurisdiction's government when the acquired property is involved in a controversy. Additionally, they cannot acquire real estate of any kind if it is located within 100 kilometres of Mexico's land borders or 50 kilometres of its coastlines, although some exceptions are available. Trusts are used in cases of interests of foreigners in these regions.

When referring to ejido lands, the Agrarian Law expressly stipulates that foreign investment in companies that own cattle breeding,

agricultural or forestry land cannot exceed 49 per cent of the company's shares. However, based on the Foreign Investment Law, this percentage can be exceeded with neutral investments through capital injection into shares or membership interests with no voting rights or limited economic rights, as long as the National Foreign Investment Commission approves it.

## GOVERNMENT PROGRAMMES

### Support programmes

- 9 | Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

In February 2020, the Ministry of Agriculture and Rural Development (SADER) published the operational rules for programmes aimed at promoting and boosting agricultural production through monetary incentives.

#### Credits for plant producers

This is aimed at producers of corn, beans, bread, wheat, rice, amaranth, chia, sugar cane and coffee, with a budget of 11 billion pesos to provide direct support. Among the criteria set by the Ministry are:

- the producer plants an eligible crop;
- verification that, in the previous year, the producer used a support resource in the productive activities of his or her crops;
- the producer is registered before SADER; and
- the properties of the producer have been geo-referenced to identify their locations.

#### Credits for cattle producers

This has a budget of 4 billion pesos and is aimed at increasing the productivity of small cattle producers through the provision of in-kind support and actions for sustainable comprehensive productive capitalisation. Among other things, it seeks to:

- increase the inventories of cattle, sheep, pigs, goats and bees;
- serve and support small livestock producers of up to 35 animal units or their equivalent, whether individuals or legal entities;
- support equipment and livestock infrastructure works; and
- increase the availability of food and supplements for the consumption of livestock species.

#### Credits for fishermen

Through the National Aquaculture and Fisheries Commission, direct financial support is given to fishermen, crew members of larger vessels and operational workers of aquaculture production units in coastal and inland waters that are linked to active fishing and aquaculture economic units if they are registered in the National Registry of Fisheries and Aquaculture.

#### Mexican Organisation for Food Security

The Mexican Organisation for Food Security was created to coordinate the acquisition of agri-food products at reasonable prices and to sell and distribute fertilisers, enhanced seeds and any other product that contributes to raising field productivity. Additionally, it seeks to promote the creation of micro, small and medium-sized enterprises dedicated to and associated with the food marketing business.

Together with the programmes described above, credit institutions, both public and private, have also developed financing and support plans for individuals and legal entities dedicated to agribusiness.

### Incentives for foreign investors

- 10 | Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

Yes. Depending on the agribusiness activity, these programmes range from those offering fiscal incentives related to research and development activities to those allowing customs-free import of equipment to Mexico on a temporary basis or the possibility of obtaining a drawback on import customs.

The requirements to apply for each programme depend on the activity, industry and whether the applicant is an individual or private entity.

## FOOD SAFETY, CERTIFICATION PROGRAMMES, ANIMAL SAFETY AND DISEASE

### Livestock legislation

- 11 | List the main applicable enacted legislation for primary processors of live animals.

One of the most regulated agribusiness activities in Mexico is the animal food industry. There are federal and local laws and regulations, Mexican Official Standards and general decrees that range from the handling and care that should be given to livestock during their life cycles to the way in which slaughter must be carried out for its subsequent processing and human consumption.

However, the main applicable enacted regulations that provide a uniform regime for animal products are:

- the Federal Law on Animal Health;
- the Law on Biosafety of Genetically Modified Organisms;
- the General Health Law;
- the Regulation for the Sanitary Control of Products and Services;
- Mexican Official Standard NOM-012-ZOO-1993 (specifications for the regulation of chemical, pharmaceutical, biological and food products for use in or consumption by animals); and
- Mexican Official Standard NOM-008-ZOO-1994 (animal health specifications for the construction and equipment of establishments for the slaughter of animals and those dedicated to the industrialisation of meat products).

### Food safety regime

- 12 | Describe food safety regulations for meat and poultry products, and all other food products in your jurisdiction.

For the sanitary control of food, including meat and poultry products, there must be an up-to-date operating notice and compliance with the provisions of the following enacted regulations:

- the General Health Law;
- the Regulation for the Sanitary Control of Products and Services;
- the Federal Law on Animal Health and its Regulation;
- the Federal Law on Plant Health and its Regulation;
- the Law on Organic Products and its Regulation;
- the General Law on Sustainable Fisheries and Aquaculture;
- the Law on Biosafety of Genetically Modified Organisms;
- the Law on Rural Development;
- the Federal Law on Plant Varieties and its Regulation; and
- Mexican Official Standard NOM-251-SSA1-2009 (hygiene practices for the processing of food, drinks or food supplements).

In general terms, the above-mentioned federal laws regulate everything related to any food product in Mexico. However, there are also specific Mexican Official Standards, depending on the product being processed, for example:

- Mexican Official Standard NOM-194-SSA1-2004, applicable to establishments dedicated to the slaughter and dressing of animals for supply, storage, transport and sale;
- Mexican Official Standard NOM-213-SSA1-2002, applicable to processed meat products;
- Mexican Official Standard NOM-242-SSA1-2009, applicable to fresh, chilled, frozen and processed fish products;
- Mexican Official Standard NOM-243-SSA1-2010, applicable to milk, milk formula, combined dairy product and dairy derivatives; and
- Mexican Official Standard NOM-201-SSA1-2002, applicable to water and ice for human consumption, packaged and in bulk.

### Safety enforcement

- 13 | What enforcement can take place in relation to food safety?  
What penalties may apply?

#### Administrative sanctions

The relevant legislation contains a list of types of conduct that are considered administrative infringements, which, depending on the severity of the conduct and the damage caused, can be punished through a fine, temporary or definitive closure, and suspensions, revocations or cancellations of authorisations and permits.

For example, the mobilisation, importation or exportation of vegetables, their products or by-products and inputs subject to phytosanitary control, without counting, when required, the phytosanitary certificate, can result in a fine along with the suspension, in a precautionary manner, of authorisations, permits or approvals granted to the infringer.

As for the Federal Law on Animal Health, there are certain requirements that must be met in respect of vehicles and the transportation of live animals, animal goods and products for use in or consumed by animals when they involve a zoonosological or contamination risk. If these requirements are not met, a fine will be imposed along with the suspension of the corresponding authorisation.

#### Criminal sanctions

Within the laws in charge of regulating food safety, there is a list of conducts that constitute criminal offences and are punished with imprisonment and a fine; for example, it is a criminal offence to move into the national territory or transport or trade within it live animals, their products or by-products that have been fed with an illegal substance.

#### Civil liabilities

According to the Federal Civil Code, a person who acts illicitly and causes damage to another is obliged to repair the damage unless it can be shown that the damage occurred as a result of fault or inexcusable negligence of the victim. In this scenario, if producers and suppliers do not comply with the legislation for food safety and, by not doing so, it is proved that they caused damage to another person (eg, defective or contaminated food or food ingredients), they may be liable and will have to pay compensation to the affected party.

### Product certification

- 14 | Describe any certification programmes and regulations for genetically modified foods and organic foods.

The main enacted legislation includes the Law on Biosecurity of Genetically Modified Organisms and its Regulations, which contain regulations on the activities relating to confined use, experimental release, commercialisation, import and export of genetically modified organisms (GMOs) to prevent or reduce the possible risks that those activities could cause to human health, the environment, biological diversity or animal, plant and aquaculture health.

- Additionally, regulations on GMOs can be found in the following laws:
- the Federal Law on Animal Health;
  - the Federal Law on Plant Health;
  - the Law on Organic Products; and
  - the Federal Law on the Production, Certification and Trade of Seeds

All these regulations refer to safety and sanitary requirements that any GMO must comply with to prove that they can be distributed among the population. In that sense, the producer or interested party must obtain a marketing authorisation from the Federal Commission for Protection against Sanitary Risks (COFEPRIS) that will enable its distribution and importation.

### Food labelling requirements

- 15 | What are the food labelling requirements, including the applicable enacted legislation, enforcement and penalties?

The food labelling requirements must be in Spanish, clear, understandable, accurate, useful for the consumer and supported by scientific and technical information. They must include, among other things, the following:

- name of the product;
- producer's name;
- country of origin;
- ingredients;
- net content;
- expiration date;
- lot;
- nutritional content; and
- front-of-pack nutritional label and warnings.

These requirements are regulated in the following legislation:

- the General Health Law;
- the Regulation for the Sanitary Control of Products and Services;
- the Federal Law for Consumer Protection;
- Mexican Official Standard NOM-050-SCFI-2004 (commercial information and general labelling for products); and
- Mexican Official Standard NOM-051-SCFI/SSA1-2010 (general specifications for the labelling of food and non-alcoholic beverages).

On 8 November 2019, important amendments to the General Health Law came into force, stating that front-of-pack warning labelling of food and non-alcoholic beverages that exceed the maximum limits for, among other things, energy content, added sugars, saturated fats and sodium should be stated separately and independently from the ingredient and nutritional information.

As a consequence, and to comply with these modifications made to the General Health Law, on 27 March 2020, amendments to the Mexican Official Standard NOM-051-SCFI/SSA1-2010 (general specifications for the labelling of food and non-alcoholic beverages) were approved.

Therefore, as of 1 October 2020, any pre-packaged food and non-alcoholic beverage that exceeds the maximum limits for energy content, added sugars, saturated fats and sodium that is marketed in national territory must include an independent front-of-pack warning label with the applicable warning seals or sweetener inscription.

Additionally, according to those amendments to the Mexican Official Standard, as of 1 April 2021, if the pre-packed product includes one or more warning seals or a sweetener inscription, the label must not include:

- childish characters, animations, animated cartoons, celebrities, athletes or mascots;
- interactive elements, such as visual-spatial games or digital downloads, addressed to children, encouraging or promoting

the consumption, purchase or selection of products that have an excess of critical nutrients or contain sweeteners; and

- references on the label to unconnected elements of the product with the purpose of encouraging or promoting the consumption, purchase or selection of products that have an excess of critical nutrients or contain sweeteners.

The enforcement of the above-mentioned laws and the imposition of sanctions mainly lie with COFEPRIS. Sanctions are of an administrative nature (fines, temporary or definitive closure, and suspensions, revocations or cancellations of authorisations and permits). However, compensation derived from civil liability is also a possibility if the affected party can prove that the damage suffered was a direct consequence of non-compliance with the food labelling requirements.

### Food animal legislation

16 | List the main applicable enacted legislation regarding health of food animals, including transportation and disease outbreak and management.

The regulatory framework concerning the health of food animals is extensive and composed of laws, regulations, Mexican Official Standards and general decrees, regulating, among other things, the requirements concerning and the procedures of animal transportation and the way in which the establishments where any product used on or to be consumed by animals should be handled.

In general terms, the Federal Law on Animal Health is the basis for many important Mexican Official Standards, such as the following.

#### Mexican Official Standard NOM-024-ZOO-1995

This standard regulates the specifications and zoonotic characteristics concerning the transportation of animals, their products and by-products, chemical, pharmaceutical, biological and food products for use in or consumption by animals. It prohibits the transportation of sick animals unless it is for the purpose of treatment in a specialised clinic, preferably close to the place of origin, or its slaughter in authorised slaughterhouses. In addition, vehicles intended for the transport of all types of animals must be cleaned and disinfected before and after each transfer.

#### Mexican Official Standard NOM-054-ZOO-1996

This standard seeks to avoid the entry into the country of diseases, as well as preventing and controlling the propagation of those that are already in Mexico, and regulates the establishment of different types of quarantine (internal, external, total, conditional and preventive), depending on the particularities of the case, for animals and their products.

#### Mexican Official Standard NOM-012-ZOO-1993

This standard regulates chemical, pharmaceutical, biological and food products for use in or consumption by animals. It includes specifications on the characteristics that the storage and unloading areas of the products must fulfil, depending on whether the product is the raw material or the finished product.

Compliance with the above-mentioned regulations is monitored by the National Service for Agri-food Health, Safety and Quality (SENASICA), with its authority dependent on the Ministry of Agriculture and Rural Development.

### Animal movement restrictions

17 | What are the restrictions on the movement of animals within your country?

The general rule is that animal transportation is always permitted. However, according to Mexican Official Standard NOM-024-ZOO-1995, it

is prohibited to transport sick animals unless it is for the purpose of treatment in a specialised clinic, preferably close to the place of origin, or its slaughter in authorised slaughterhouses.

Vehicles used for transportation must be cleaned and disinfected before and after each transfer and, if the travel time will be over eight hours, the vehicles must have an area to dispose of corpses that is large enough to contain up to 10 per cent of the animals that are transported.

Additional restrictions may also apply in consideration of national campaigns against any disease, which may involve forced quarantine to face or prevent the propagation of those diseases.

### Slaughter legislation

18 | Where would one find the regulations related to livestock slaughtering?

#### Federal Law on Animal Health

This is the general law from which many Mexican Official Standards are derived. The authority in charge of its enforcement is SENASICA.

#### Regulation for the Sanitary Control of Products and Services

This regulation is aimed at animal products; however, it also refers to animal slaughtering. For instance, it provides that animals that arrive dead or sick with any disease indicated by the competent authorities should be slaughtered and incinerated immediately. It also states that meat cannot be distributed or sold if the animal died for reasons other than slaughter.

#### Mexican Official Standard NOM-008-ZOO-1994

This standard regulates the zoonotic specifications that must be met for the construction of facilities and related equipment for animal slaughterhouses and for the industrialisation of meat products. The federal government enforced this legislation. However, if a slaughterhouse is located in state and municipal jurisdictions, the relevant state and municipal regulations may apply.

#### Mexican Official Standard NOM-009-ZOO-1994

This standard regulates the sanitary process of meat and provides the procedures to be followed by animal slaughterhouses and those that process, pack and refrigerate meat products or by-products for human consumption, with the purpose of obtaining products that satisfy all sanitary requirements.

#### Mexican Official Standard NOM-012-ZOO-1993

This standard provides regulation on the methods for killing domestic and wild animals, aimed at public or private establishments where animals are killed for the purpose of food supply, research, verification tests, teaching, hunting, fur or any other type of use.

#### Mexican Official Standard NOM-051-ZOO-1995

This standard provides the ethical standards and systems for the movement and transportation of animals, seeking to avoid or reduce their suffering during the process.

### Pest control requirements

19 | Outline the regulatory regime for pesticides in your jurisdiction.

Regulation of pesticides can be found in the federal laws on animal and plant health, as well as the General Health Law and Mexican Official Standards, such as:

- NOM-032-SAG/FITO-2014, which establishes the phytosanitary requirements and specifications for conducting biological effectiveness studies of agricultural pesticides and technical opinions; and

- NOM-033-FITO-1995 and NOM-034-FITO-1995, which provide the phytosanitary requirements and specifications that must be met by individuals or entities interested in manufacturing, importing and marketing agricultural pesticides.

To be able to market a pesticide in Mexico, the interested party must obtain a marketing authorisation from COFEPRIS. The full process may involve several authorities and procedures, such as:

- importing experimental samples or the finished product of the pesticide, in which case, the interested party must request and obtain an import permit from either COFEPRIS or the Ministry of Environment and Natural Resources (if the import permit is for a finished product, it must have a marketing authorisation);
- requesting an evaluation of biological effectiveness studies in the field before SENASICA and the obtaining of a favourable technical opinion; and
- filing a marketing authorisation before COFEPRIS once a favourable technical opinion has been received.

## BUSINESS ORGANISATION

### Typical organisation

#### 20 | How are agricultural operations typically organised in your jurisdiction?

Two types of company are typically used, depending on the possibility of obtaining tax benefits and government subsidies and incentives.

### Cooperative organisations

Regulated by the General Law of Cooperative Societies, agricultural cooperatives are organisations that belong to the people who use their services, who control them with democratic methods and of which the risks, costs and benefits are distributed or shared among all their members in proportion to the use they make of their services. They are non-profit companies because their organisation is focused on the economic benefit of their members as users of the services, rather than on the accumulation of profits.

According to the General Law of Cooperative Societies, there are two types of cooperative organisations:

- consumer: made up of farmers who own the land, whether under an ejido, communal or small property regime, who are organised for the purchase or use of goods; and
- producer: in addition to carrying out the typical activities of consumer cooperatives, they can partner to produce at scale.

The main characteristics are the following:

- individual membership only (ie, no entities are allowed);
- restrictions on foreign investment (10 per cent of capital stock);
- management positions occupied by Mexicans only; and
- limited liability: limited to the payment of his or her contribution or supplementary liability; each member is proportionally liable for the organisation's activities up to the amount agreed.

### Rural production companies

Regulated by the Agrarian Law, these are entities dedicated to the exclusive productive activities of agriculture, livestock, fishing and forestry. They may be constituted with a minimum of two partners; that is, two or more rural producers. Management is not restricted on grounds of nationality unless otherwise agreed in the by-laws.

Since foreign investment and foreign members are not allowed in social solidarity organisations, and because of the significant administrative burden and approvals required, this type of organisation is not an option for foreign investment.

Members can choose any liability regime:

- limited: partners will respond up to the amount of their contribution to the capital stock;
- unlimited: partners will respond to all obligations jointly, regardless of their contribution; or
- supplemented: partners respond to the payment of their contribution to the capital stock and all the social obligations on a subsidiary basis, up to the amount that has been determined.

The benefits are:

- exemption from paying taxes for their primary activities;
- the ability to work in a simple way by complying with their tax obligations in a simplified manner; and
- exemption from paying income tax.

### Foreign ownership

#### 21 | Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

According to the Constitution, only Mexicans can acquire ownership of land and water. However, foreigners can acquire real estate if they expressly renounce it to the protection of their jurisdiction's government when the acquired property is involved in a controversy. Additionally, they cannot acquire real estate of any kind if it is located within 100 kilometres of Mexico's land borders or 50 kilometres of its coastlines, although some exceptions are available.

Foreign investment in companies that own cattle breeding, agricultural or forestry land cannot exceed 49 per cent of the company's shares. However, based on the Foreign Investment Law, this percentage can be exceeded with neutral investments through capital injection into shares or membership interests with no voting rights or limited economic rights, as long as the National Foreign Investment Commission approves it.

## AGRICULTURAL WORKERS, IMMIGRATION, AND HEALTH AND SAFETY

### Worker rights

#### 22 | Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

The main legislation in force regarding the rights of workers are article 123 of the Constitution, the Federal Labour Law and the Social Security Law. These laws provide the regulation of relationships between employers and employees, regardless of the sector in which they operate. The only case where different and specific legislation is applicable arises when the working relationship is involved in the public sector; however, this is not the case in agricultural operations.

The Federal Labour Law and the Social Security Law establish further worker and social security rights specifically aimed at farmworkers (ie, those that work directly on the farmland) because they are considered a very vulnerable group exposed to a lot of risks as consequence of the nature of their work. Some of those further rights include:

- the obligation of the employer to provide them with comfortable and hygienic rooms;
- obtaining the water needed for their domestic use and their farmland animals;
- hunting and fishing, for their own use, in accordance with the applicable laws; and
- free transit through established roads and paths, as long as the crops are not affected or damaged.

The perception that farmworkers are a vulnerable group is because their specific work is performed under conditions that can easily change

and that can expose them to higher working risks; for example, operating heavy and dangerous machinery related to farmland.

The Federal Labour Law classifies farmworkers as:

- temporary: hired for specific work or a specific period;
- seasonal: hired only at certain times of the year to carry out related activities; or
- permanent: hired on a year-round basis or any temporary or seasonal farmworker who is hired by the same employer for a minimum of 27 continuous weeks but exceeds this period.

## Immigration regulation

### 23 | How is farmworker immigration regulated in your jurisdiction?

There is no specific regulation on farmworker immigration in Mexico; the working relationship in respect of an immigrant farmworker is the same as any other working relationship. The Immigration Law states that every immigrant has all the rights recognised in the Constitution, including the right to work.

However, given their particular situation, there are some specific requirements that must be fulfilled for a foreign individual to work in Mexico (for any type of work):

- there must be a job offer from any institute or authority, expressly mentioning the name and nationality of the possible employee, the position offered, the wage amount, the employment term and the workplace;
- the employer must be registered before the National Immigration Institute; and
- the relevant visa must be obtained:
  - a visa for a visitor with expressed permit to perform paid activities for a maximum of 180 days must be requested by the employer; and
  - a visa for a visiting cross-border worker to perform paid activities for a maximum of one year must be requested by the worker and only applies to workers who are nationals of countries bordering Mexico.

The only provision in the Federal Labour Law regarding foreign workers establishes that at least 90 per cent of a company's employees must be Mexican, and any technical or professional position must be occupied by a Mexican. However, a foreign worker can undertake the technical or professional position if:

- there are no Mexican workers within that specific specialisation; and
- the foreign professionals are temporarily employed and constitute less than 10 per cent of the employees.

## Work health and safety regulation

### 24 | Outline the health and safety regulations relating to farmworkers in your jurisdiction.

There are two principal pieces of legislation regarding health and safety in Mexico for farmworkers: the Federal Labour Law and the Federal Regulations on Health and Safety in the Workplace.

This legislation provides all workers with the same rights, regardless of their sector of activity, origin or migratory status. Further, as a working relationship, the employer is responsible for the health and safety standards of the workplace, and the workers are responsible for observing the related rules.

Additional worker rights relating to health and safety are contemplated for farmworkers because they are considered a very vulnerable group exposed to a lot of risks as a consequence of the nature of their work. The employer must:

- provide information on the risks to which the farmworkers are exposed and training on the machinery, equipment and tools to be used;

- provide the farmworkers with comfortable and hygienic rooms;
- provide provisional drinking water and sanitation services in the workplace;
- possess the necessary equipment and health supplies to assist the worker in the event of a stroke heat or severe dehydration;
- provide safe transportation from their resting place to the workplace; and
- provide periodic medical check-ups.

## INTERNATIONAL TRADE

### Import regulation

#### 25 | Describe the regulatory environment for animal product imports.

According to the Federal Law on Animal Health, a zoosanitary certificate from the Ministry of Agriculture and Rural Development is required in respect of:

- live animals;
- animal products;
- biological agents, including genetically modified organisms;
- products for and to be consumed by animals;
- machinery, vehicles, containers and equipment related to animal products; and
- any product that may be carrier of animal diseases or pests.

To obtain a health certificate for the importation of the above-mentioned products, besides the specific requirements established in the Mexican Official Standards and other regulations, the application must comply with the following general requirements:

- the product must come from countries with veterinary services recognised by the Ministry of Agriculture;
- the Ministry of Agriculture's authorisation is required if the product is a sample for research purposes; and
- for products for and to be consumed by animals, the product must have a certificate of free sale in the country of origin.

On 1 July 2020, the United States–Mexico–Canada Agreement (USCMA) came into force, with a specific chapter on the sanitary and phytosanitary measures the parties must enforce to strengthen the inspection and sanitary measures of food and agro-industrial products. These measures are aimed at protecting the life and health of people and animals, as well as preserving plants. The chapter regulates topics in respect of:

- inspections to verify compliance with the sanitary measures, which the parties can make periodically;
- improvements in the risk analysis for imported and exported products;
- promotion and strengthening of communications between the sanitary authorities of the parties;
- avoidance of unnecessary barriers for trade; and
- promotion of science-based decision-making.

#### 26 | Describe the regulatory environment for all other food imports.

Applicable laws for all other food imports, such as plants, products and by-products, include the General Health Law and the Federal Law for Plant Health.

According to the Federal Law on Plant Health, a phytosanitary certificate is required to import plants, fruits, and vegetables, and the importer must also prove that the goods comply with regulations, including the Mexican Official Standards.

The Ministry of Health, through the Federal Commission for Protection against Sanitary Risks, has the obligation to inspect food

products to guarantee that they are safe for human consumption and thereby for food imports.

### Tariffs and quotas

#### 27 | May tariffs, quotas or similar measures be put in place?

The Foreign Trade Law and the Customs Law are the principal statutes that regulate tariffs on import products in Mexico, including agricultural products. Mexico has a value-added tax (IVA) on most sales transactions. Basic products, such as food and drugs and some services, are exempt from the IVA.

Additionally, the Foreign Trade Law provides exceptional situations that can be related to agribusiness in which a non-tariff measure may be applicable to imports and exports:

- general situations:
  - when expressly stated in international treaties that Mexico is part of; and
  - anything related to unforeseen situations, such as those concerning national security, public health and the environment;
- imports:
  - when regulating the entry of used products, waste materials or products that lack a substantial market in their country of origin;
  - as a response to restrictions to Mexican exports unilaterally imposed by other countries; and
  - to stop the entry of products under conditions of dumping; and
- exports:
  - assurance of the supply of products for people's basic consumption and the supply of raw materials to national producers;
  - products for which commercialisation comes with a constitutional restriction;
  - any necessary goods to preserve or assure the conservation of endangered species of animals and plants; and
  - necessary products to preserve goods with historical, artistic and archaeological value.

Moreover, the USMCA states that there will be no tariffs for products that meet the rules of origin requirements under the Agreement.

### Import and export treaties

#### 28 | What treaties apply to the import and export of agricultural products in your jurisdiction?

Mexico has 12 free trade agreements (FTAs) with over 50 countries. The agreements covering, among other aspects, the import and export of agricultural products are the following:

- the USMCA;
- the Japan–Mexico Economic Partnership Agreement;
- the Pacific Alliance with Colombia, Chile and Peru;
- the Mexico–Central America Free Trade Agreement with Costa Rica, Nicaragua, El Salvador, Guatemala and Honduras;
- the Trans-Pacific Partnership with Australia, Brunei, Canada, Chile, Japan, Malaysia, New Zealand, Peru, Singapore and Vietnam;
- the European Free Trade Association with Iceland, Liechtenstein, Norway and Switzerland;
- the Chile–Mexico FTA;
- the Mexico–Colombia FTA;
- the Mexico–Panama FTA;
- the Mexico–Uruguay FTA;
- the Mexico–Israel FTA;
- the Mexico–Peru Trade Integration Agreement; and
- the Mexico–Bolivia Economic Complementation Agreement.

Along with these FTAs, Mexico has subscribed to 32 agreements for the promotion and reciprocal protection of investments with 33 countries and nine limited-scope agreements within the framework of the Latin American Integration Association.

In addition, Mexico actively participates in multilateral and regional organisations and forums, such as the World Trade Organization, the Asia-Pacific Economic Cooperation Mechanism, the Organisation for Economic Cooperation and Development and the Latin American Integration Association.

All the above-mentioned international treaties and forums contain specific regulations regarding import and export in relation to the agricultural industry.

## INTELLECTUAL PROPERTY

### Plant breeder rights

#### 29 | How are plant breeders' property rights protected in your jurisdiction?

The main legislation in force is the Federal Law on Plant Varieties. Additionally, Mexico is a member of the International Union for the Protection of New Varieties of Plants.

The National Seed Inspection and Certification Service (SNICS) is responsible for granting the plant breeder's certificate and enforcing the relevant regulation and plant variety certification procedure. The application for the plant breeder's certificate must comply with specific legal requirements regarding the characteristics of the plant variety:

- new: different from any other plant in the world;
- distinct: with clearly technically distinguishable characteristics;
- stable: retains its characteristics after several acts of propagation or reproduction;
- uniform: sufficiently uniform in its relevant characteristics, subject to the expected variation attributable to its reproductive or vegetative propagation; and
- not be identical or confusingly similar to one previously protected under Mexican industrial property provisions.

If all the requirements are fulfilled, SNICS will recognise a plant variety right, with the following extensions in respect of the breeder:

- recognition as the breeder of a plant variety;
- exclusive use and exploitation of the plant variety and the propagating material thereof for the purposes of production, reproduction, distribution or sale and production of other plant varieties and hybrids; and
- exclusivity of 18 years for perennial species and their rootstocks and 15 years for other species. Once these periods expire, the plant variety, its use and exploitation becomes public property.

As part of the adaptation of the domestic laws to the text of the United States–Mexico–Canada Agreement (USMCA), on 19 February 2019, a project to amend the Federal Law on Plant Varieties was presented before Congress and was meant to be discussed before 1 July 2020. Even though the discussion of this amendment did not happen, it has been highly criticised because, according to farmworkers and producers, it threatens their freedom to trade seeds by extending the scope of protection of the plant variety rights, and it is not taking small and medium-sized producers into consideration.

Some of the most relevant proposed amendments are the following:

- exclusivity of 25 years for perennial species and their rootstocks and 20 years for other species;
- high fines when an infraction is committed;
- the final product also being included within the exclusivity rights of protection of a plant variety;

- sanctions, such as temporary or permanent closure of the place where the infractions have been carried out (ie, closure of farm-lands and seed trading markets);
- the possibility for SNICS to order the destruction of the plant variety, seeds and the harvested product if the farmworker does not prove he or she is the plant variety right holder; and
- the requirement of the express consent of the right holder to a third party for:
  - production, reproduction or multiplication for commercialisation purposes;
  - an offer for sale;
  - sale or any other form of commercialisation;
  - export and import; and
  - possession for any of the above-mentioned purposes.

The fact that the amendment was not discussed before the entry into force of the USMCA does not imply that it has been discarded, as the subject can be taken up again later.

### Access to plant varieties and technologies

#### 30 | How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

Under the Federal Law on Plant Varieties, a farmer can use a protected plant variety without the consent of the right owner only in the following cases:

- for its genetic improvement (research purposes);
- in the multiplication of propagating material intended for personal use or seed for sowing; and
- exclusive and personal benefit of the farmer (for human or animal consumption).

Plant technologies can be protected by a patent (ie, the Industrial Property Law will be applicable). However, as with the Federal Law of Plant Varieties, a farmer can access these technologies without the consent of the patent holder (no patent infringement) for:

- non-commercial purposes (research, academic or experimental means); and
- acquisition, commercialisation or use of a product derived from a protected process, after the product has been lawfully introduced into the market.

### Other intellectual property

#### 31 | What other intellectual property considerations apply to agribusiness in your jurisdiction?

According to the Federal Law on Plant Varieties, emergency licences may be granted to exploit a protected plant variety when:

- the exploitation is considered essential to satisfy the needs of a sector of the population, and there is a deficiency in supply or stock; or
- the plant variety has not been exploited within a period of three years from the date of issuance of the title.

After the emergency licence has expired, compensation is paid to the breeder, and he or she will recover his or her exclusive rights.

The Law on Industrial Property establishes that any invention related to a plant variety cannot be protected by a patent. However, machinery or tools used in agribusiness may be subject to patent protection.

The USMCA, in force since 1 July 2020, will have an impact on data protection exclusivity (RDP) in Mexico in respect of agrochemicals.

Regulatory authorities in many countries, including Mexico, require the applicant for a marketing authorisation for a new drug to provide data

concerning the safety and efficacy of the drug. A company developing a drug must, when bringing it to the market, invest in the generation of all the corresponding data required to prove the quality, safety and efficacy of the drug, including clinical trials, with the expenses usually being covered by the developer.

Protection of clinical data aims to create a commercial balance, allowing scientific research from the pharmaceutical industry to subsist to promote better access to health the population.

Based on the Law of Industrial Property, which references to international treaties (the North American Free Trade Agreement, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the USMCA) for data package exclusivity protection, holders of a marketing authorisation can request the protection of the data submitted before the regulatory agencies. This aims to avoid any disclosure of the safety and efficacy information provided to obtain a marketing authorisation for an innovative product and to prevent that information from being delivered to a third party or being used directly or indirectly to support an application for an authorisation without the approval of the corresponding holder.

According to the new provisions established in the USMCA, RDP for agrochemicals can be requested and obtained for 10 years. Unfortunately, with no domestic law, litigation is required to obtain RDP from the corresponding regulatory agency.

However, since 1 July 2020, Mexico has a five-year period within which to amend any domestic law that is not compatible with the USMCA.

## ENVIRONMENTAL ISSUES

### Regulatory agencies

#### 32 | Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.

The primary government agency is the Ministry of the Environment and Natural Resources, the main purpose of which is to promote the protection, restoration and conservation of ecosystems and natural resources. The Ministry has specialised departments that deal with environmental law related to specific activities, such as:

- the National Institute of Ecology and Climate Change: in charge of policymaking focused on ecological preservation and restoration, green growth, and mitigation and adaptation to climate change in the country;
- the National Water Commission: the regulator when national waters are used in agribusiness matters;
- the Federal Agency for the Protection of the Environment: seeks environmental justice through the application and compliance of federal environmental legislation by attending to popular complaints and conducting inspections and verifications; and
- the National Institute of Fisheries: coordinates and guides scientific and technological research in fisheries and aquaculture, as well as development, innovation and technology transfer, seeking to contribute to the care of biodiversity, ecosystems and aquatic habitats.

If it is a very specific sector of agriculture, the coordinated participation of other authorities, such as the health authorities, will be required to ensure that all sanitary requirements are met and to avoid risks that may have a negative impact on the health of the population.

### Water and air pollution regulation

#### 33 | Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

The General Law of Ecological Balance and Environmental Protection is the regulatory law for the preservation and restoration of ecological

balance, as well as the environmental protection of the atmosphere, land and water in Mexico. Furthermore, Mexican environmental law is complemented by the legislation of the states and Mexican Official Standards.

### Waste regulation

**34** Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

Liquid and other waste is regulated by the General Law of Ecological Balance and Environmental Protection, and some subjects, when required, can be complemented with Mexican Official Standards. Additionally, the General Law for the Prevention and Integrated Management of Waste is responsible for waste regulation.

When referring to waste derived from agricultural activities, the above-mentioned Law labels it as special management waste as it meets the characteristics to be treated as dangerous. Therefore, federal and local authorities work jointly to determine the location and way of operation of establishments of final disposal centres, seeking to prevent or decrease the possible risk related to waste disposal.

## UPDATE AND TRENDS

### Key developments of the past year

**35** What are the most noteworthy current trends or primary legal issues of concern in relation to agriculture and agribusiness in your jurisdiction? What future trends in relation to agriculture and agribusiness do you foresee in your jurisdiction?

#### USMCA

The entry into force of the United States–Mexico–Canada Agreement (USMCA) on 1 July 2020 has had an impact on all areas related to agribusiness, which will eventually materialise in amendments to the applicable and domestic laws. The USMCA contains the following provisions, among other things:

- maintenance of free access to the US market for Mexican agricultural and agro-industrial products;
- elimination of export subsidies for agricultural and agro-industrial products, agreed and established in international forums, giving rise to fair trade between the parties;
- simplification of the procedures to recognise the regionalisation and equivalence of the sanitary and phytosanitary measures established by the sanitary authorities;
- supply opportunities for Mexico, owing to its geographical location, to meet the large US demand for vegetables and other agricultural products, which the United States is unable to meet;
- rules to address all biotechnologies, including new technologies such as gene editing, to support twenty-first century innovations in agriculture; and
- proposal of more responsible agricultural activity that meets North American regional commitments in respect thereof – an area in which Mexico has worked seriously in respect of the use of agrochemicals and has established practices of great value and efficiency for better management of water and soil.

#### New IP Law

The Federal Law for the Protection of Industrial Property was published on 1 July 2020 and will come into force on 5 November 2020.

The Law prohibits the protection of inventions for which exploitation must be prevented to protect the health or life of people, animals or plants, or to avoid serious damage to the environment. This will generate debate and controversy since the concept of 'public order' must be interpreted on a case-by-case basis. The parameters that the



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Mexican Institute of Industrial Property will adopt to decide whether to grant patents based on this prohibition must be analysed.

### Coronavirus

**36** What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

On 31 March 2020, owing to the increase in cases of covid-19 and to face the pandemic, the Ministry of Health ordered the immediate suspension of all activities from 30 March to 30 April 2020, with the exception of essential activities, which included:

- those necessary to attend to the health emergency;
- those involving public safety;
- those related to fundamental sectors of the economy; and
- those related to critical public services.

The agribusiness sector was among the fundamental sectors that did not suspend activities since work within this sector is essential to ensure the supply of food. Therefore, agribusiness companies and workers, such as farmers and fishermen, have taken extreme hygiene and social distancing measures and have intensified the use of masks and gloves, which was common in many activities.

While other sectors stopped and suffered, or are suffering, a drop in their sales owing to the covid-19 pandemic, the agribusiness sector has continued its course at a constant and even accelerated pace owing to a greater demand for products not only in Mexico but also abroad, such as in the United States. However, this greater demand is being handled by fewer workers as the stay-at-home restrictions were applied to people in vulnerable groups.

To support the agribusiness sector, Mexico has intensified the programmes aimed at promoting and boosting agricultural production through monetary incentives, in particular the credits for plant producers programme:

- as of 31 March 31 2020, the programme has provided support to more than 1.5 million producers, who have farms with a total area of approximately 2 million hectares; and

- despite the uncertainty surrounding the pandemic, the programme is ongoing with the firm expectation of fulfilling its commitments to deliver support throughout 2020 to producers of corn, beans, wheat, rice, amaranth, chia and other grains, as well as coffee and sugarcane.

Finally, to provide clarification on the impact of the pandemic, the Ministry of Agriculture and Rural Development published on its official website a question and answer section related to the measures to guarantee the production and supply of food in Mexico. This was in response to constant concerns about how the pandemic would affect food, as well as the risk of contagion that each activity or related product could involve. Within this section, relevant information can be found regarding:

- food supply;
- food purchase;
- animal health;
- agri-food health;
- phytosanitary and zoosanitary inspections; and
- international trade.

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