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Debt/Equity Swaps and Mexican Law: The Interplay Between Law and Regulation

*Mark B. Baker**

I. INTRODUCTION

Undeniably, one of the most significant current economic issues is the role of Direct Foreign Investment ("DFI") in the continued development of all nations, rich and poor. History has shown that successful DFI requires a delicate balance between the investor and host country. The emerging view (and one supported by the plethora of recently enacted or modified Foreign Investment Codes) is to seek only those investments from abroad which might be characterized as "beneficial" to the host country.

From the perspective of many "First World" investors, a considerable disparity exists between codified law and its interpretation and application in the host country. Investment decisions based upon "rational Western economic behavior," using modern financial data, by definition require a reasonably certain world. Included in such decisionmaking must be an assessment of the applicable laws and regulations of the host country. If the aforementioned do not represent the manifested intent of their drafters and implementers, Direct Foreign Investment may easily go astray.

The United States of Mexico has addressed the question of Direct Foreign Investment for many years. In doing so, Mexican policy regarding foreign investment has ranged from very receptive to extremely negative, depending upon the administration in power and the state of the

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Mexican economy. Debt/Equity swaps are the latest vehicle for achieving Mexican political and economic goals. At present, the ultimate success of the program remains to be determined. However, this latest plan again points out the juxtaposition of law and its administration in the everyday world. Mexican law may often be far removed from the reality of its application. As a result, stated governmental goals and outside investment targets often miss their mark. This Article attempts to explain how the interplay between law and its administration in Mexico has had a significant impact on the country and its outside investors, particularly in the case of debt/equity swaps.

I. DEBT/EQUITY: A BRIEF OVERVIEW

Recent Mexican executive and administrative policy, rather than legislation, has allowed and encouraged foreigners to cancel Mexican public and private debt by exchanging it for foreign equity ownership in Mexican business. This type of debt/equity swap plan often allows foreign equity in a Mexican corporation to exceed 49% percent, a situation which directly contravenes the general rule stated and, until 1984, strictly enforced¹ in the Foreign Investment Law of 1973.² As radical as this may seem, it is consistent with Mexican economic and legislative history, as well as the country's immediate needs. Mexico's oil boom and subsequent bust, an aggressive international lending community, the flight of pesos from Mexico into dollar accounts abroad, and the subsequent continuing devaluation of the peso have resulted in Mexico's economy being highly leveraged and unable to service the interest payments, let alone the principal, on its debt.

Although Mexico's recent debt/equity swap program is designed to facilitate the transformation of public debt into private investment, the program should not be considered a total panacea for the ills that plague that country. Rather, the debt-for-equity swap program is primarily intended to attract the foreign investment necessary to revitalize the Mexican economy and simultaneously reduce Mexican foreign debt.

Given its history, Mexico has understandably implemented such a significant economic tool through administrative policy rather than through legislation. This Article will briefly examine Mexico's law-making history, focussing on its response to the country's economic conditions and the presence of foreign investment. Next, the Article will

¹ NATIONAL FOREIGN INVESTMENT COMMISSION OF MEXICO, GUIDELINES FOR FOREIGN INVESTMENT AND OBJECTIVES FOR ITS PROMOTION (1984)[hereinafter 1984 GUIDELINES].

² Ley para promover la inversion Mexicana y regular la inversion extranjera, *Diario Oficial de la Federacion* [hereinafter *D.O.*], Mar. 9, 1973 [hereinafter Foreign Investment Law].

explore the growth of the Mexican debt/equity swap program and examine the plan's jurisdictional validity.

The policy supporting debt/equity swaps initially appeared in provision 5.11 of the Public Sector Debt Restructure Agreement, negotiated by the Mexican government and its major foreign lenders.³ Subsequently, several transactions occurred in which Mexican public debt was exchanged for equity in Mexican enterprises. Later, in the Operating Manual for the Capitalization of Liabilities and Replacement of Public Debt with Investment, the Mexican Foreign Investment Commission memorialized the goals for the debt/equity swap program and established the necessary criteria to allow such a swap. Although this program is not the result of legislation, it does fall within specific provisions of the Foreign Investment Law of 1973 and within the spirit of the 1984 Guidelines for Foreign Investment.

II. HISTORY OF FOREIGN INVESTMENT IN MEXICO

During President Porfirio Diaz's reign from 1876 to 1911, Mexican leaders believed that a high level of capital investment in industries such as mining and utilities would raise Mexico's economy to the level achieved by the world's industrial giants. To attain this goal, the Mexican government allowed foreign investment in Mexico, hoping that such investment would stimulate industrial growth.⁴ The result was that outsiders came to own more than half of the nation's wealth, and only the handicraft and agriculture industries remained independent of foreign control and domination.⁵ At the inception of the Mexican Revolution in 1910, it is estimated that foreigners owned more than 60% of the mining industry and 25% of the land in Mexico.⁶

The Mexican Revolution was partly a response to an economy dominated by foreigners.⁷ "The causes of the Revolution were numerous, conflicting and indistinct, but undeniable among them was the perception of many Mexicans that the foreign capitalism attracted by President

³ Provision 5.11 of the Public Sector Debt Restructure Agreement, found in the Operating Manual, Manual Operativo Para la Capitalizacion de Pasivos y Sustitucion de Deuda Pública Por Inversion, Operating Manual for the Capitalization of Liabilities and Replacement of Public Debt with Investments, reprinted in J. Ritch, Foreign Investment in Mexico: The Mexican Public Debt Capitalization Program, Presentation by Ritch to members of the law firm of Ritch, Rovzar y Heather, S.C., Mexico City, February, 1987, at G-19 [hereinafter Operating Manual](on file with NORTHWESTERN JOURNAL OF INTERNATIONAL LAW & BUSINESS), at exhibit A.

⁴ Maviglia, *Mexico's Guidelines for Foreign Investment: The Selective Promotion of Necessary Industries*, 80 AM. J. INT'L L. 281, 283 (1986).

⁵ H. WRIGHT, FOREIGN ENTERPRISE IN MEXICO, 53 (1971)

⁶ *Id.* at 56, 59.

⁷ *Id.* at 60.

Porfirio Diaz's administration was demeaning and oppressive."⁸ Recovery of Mexico's economic destiny was a principal goal of the Revolution. The Constitution, a product of the Revolution, clearly reflected Mexico's quest to control its own economic destiny. The document severely limited foreign ownership of land and restrained foreign economic activity.⁹ This policy has remained an essential tenet of every subsequent Mexican administration.¹⁰

The dynamics of this policy of restrained foreign economic activity influenced each Administration's assessment of the state of Mexico's economy. Legislation entitled "The Emergency Decree of 1944" ("The Emergency Decree") granted extensive discretionary control over foreign capital to the Ministry of Foreign Relations.¹¹ The Emergency Decree introduced restraints on the "creation, modification, liquidation and transfer of stock"¹² of Mexican companies containing any foreign ownership. While the Emergency Decree, which applied only to companies organized after its enactment, initially affected only a few companies, "It, nonetheless, became the precursor of present legal restraints on foreign investment in Mexico."¹³

Mexicanization of businesses dependent upon raw or intermediate materials (e.g., Mexican share ownership of a corporation exceeding 50%) soon became necessary to procure the required import licenses.¹⁴ Additionally, businesses dependent on imports were strongly encouraged to develop alternate domestic production. While still not required by law, the Ministry of Foreign Relations insisted that businesses become Mexicanized.¹⁵

Despite the Emergency Decree, the general attitude toward foreign investment seemed contrary to that of the Decree's underlying policy. In fact, direct foreign investment in Mexico almost quadrupled between 1940 and 1965, totalling more than two billion dollars by 1969.¹⁶ At the same time, however, pressure from Mexican industrialists, organized under the *Cámara Nacional de al Industria de Transformación*, to limit the inflow of foreign capital, accompanied this increased foreign invest-

⁸ Murphy, *Expropriation and Aftermath: The Prospects for Foreign Enterprise in the Mexico of Miguel de la Madrid*, 18 TEX. INT'L L.J. 431, 433 (1983).

⁹ CONSTITUCIÓN POLITICA DE LOS ESTADOS UNITOS MEXICANOS, art. 27 [hereinafter MEXICAN CONSTITUTION].

¹⁰ H. WRIGHT, *supra* note 5, at 63.

¹¹ A. HOAGLAND, COMPANY FORMATION IN MEXICO, B-2 (1972).

¹² Emergency Decree, *D.O.*, July 7, 1944.

¹³ Maviglia, *supra* note 4, at 285, citing A. HOAGLAND *supra* note 11, at B-2.

¹⁴ A. HOAGLAND, *supra* note 11, at B-3.

¹⁵ H. WRIGHT, *supra* note 5, at 87.

¹⁶ *Id.* at 93.

ment.¹⁷ Similarly, the government recommended the restriction of foreign investment and use of domestically produced intermediate materials to stimulate import substitution.¹⁸

In the early 1970s, the only legal restraints on the percentage of foreign participation in industrialized activities resulted from the application of the Emergency Decree of 1944 and the exclusion of private participation, both domestic and foreign, in nationalized industries.¹⁹ However, the government used other methods to discourage foreign ownership. For example, the government discouraged foreign ownership through the selective application of import controls and tax incentives.²⁰ The Administration "seemed to prefer the flexibility in shaping its policies to individual investment projects that was allowed by the absence of a general law on foreign investments" and adopted "specific statutory restraints in selected industries as it felt the need . . ."²¹

Although special laws had been enacted, the actual direction of the Mexican government concerning foreign investment seemed a product of internal policy decisions by the Ministry for Foreign Relations, acting either on its own, with the concurrence of governmental agencies, or in response to ad hoc private groups fearful of foreign competition.²² For example, between 1959 and 1965, the government attempted to displace foreign investment by placing the telecommunications, petrochemical, raw material and basic products industries on the 51% Mexican equity list.²³ Additionally, in 1966, the Ministry of Foreign Relations adopted the policy of denying licenses for the foreign acquisition of majority interests in existing Mexican companies.²⁴

Mexican policy during the 1960s and early 1970s appeared to suffer from a split personality. While certain statutes mandated the severe limitation of foreign participation, the presence of foreign equity grew steadily and rapidly. The application of foreign investment restrictions seemed almost whimsical. Indeed, the inconsistencies between the actual legislation and its administration were readily apparent.

¹⁷ *Id.* at 78.

¹⁸ Maviglia, *supra* note 4, at 287.

¹⁹ See generally H. WRIGHT, *supra* note 5.

²⁰ *Id.* at 83-84.

²¹ *Id.* at 95.

²² Maviglia, *supra* note 4, at 287.

²³ *Id.* at 287, n.42.

²⁴ Gordon, *The Joint Venture as an Institution for Mexican Development: A Legislative History*, 1978 ARIZ. ST. L.J. 173, at 197.

III. FOREIGN INVESTMENT LAW OF 1973

The Law for the Promotion of Mexican Investment and for the Regulation of Foreign Investment ("The Foreign Investment Law") was enacted in 1973 and is presently the basic legislation regarding foreign investment in Mexico.²⁵ The purpose of this legislation was to codify existing laws, regulations and policies. Also, the legislation established the National Foreign Investment Commission, which could exercise significant discretionary powers created by law, as well as the National Registry of Foreign Investment.²⁶ The general rule established that foreign investors could not hold more than 49% of new Mexican companies.²⁷ This general rule is consistent with Mexico's desire to return to its Revolutionary ideal of controlling its own economic destiny. Article 1 of the Foreign Investment Law establishes that the law's objective is to stimulate a balanced and independent Mexican economy.

The Foreign Investment Law,²⁸ the Technology Law,²⁹ and the Inventions and Trademarks Law,³⁰ re-affirmed the diminished role of foreign enterprise in the Mexican economy. Although these enactments created controversy and resulted in a noticeable decline in foreign investment in Mexico, many were relieved that at least there appeared to be a final codification on the subject. "Here at last, one thought, were the rules to the game, rules that subsequent administrations might enforce with varying nuances of strictness or indulgence, but predictable rules nonetheless."³¹

The Foreign Investment Law places all business activities in four categories. The first concerns exclusively state-related business³² the second, Mexican Nationals,³³ and the third concerns foreign ownership limited to 49%. In the fourth category, percentages of foreign-owned equity are administratively negotiable. However, foreign equity exceeding 49% has been the exception rather than the rule. As a result, most foreign investment in Mexico takes on the form of minority participation in a

²⁵ Foreign Investment Law, *supra* note 2.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Ley sobre el registro de la transferencia de tecnología y el uso y la explotación de patentes y marcas, *D.O.*, Dec. 30, 1972.

³⁰ Ley de invenciones y marcas, *D.O.*, Feb. 10, 1976, *reenacted with amendments as* Ley sobre el control y registro de la transferencia de tecnología y el uso y explotación de patentes y marcas, *D.O.*, Jan. 1, 1982.

³¹ Murphy, *supra* note 8, at 440.

³² *Id.* at 447.

³³ *Id.*

joint venture dominated by Mexican majority participants.³⁴

The Foreign Investment Law set forth two major changes in the restriction on foreign investment in Mexico. First, it established the 51% Mexican ownership concept as a general rule. A foreign investor establishing a business with less than 50% foreign ownership need do no more than register the business with the National Registry of Foreign Investment. Second, the Foreign Investment Law of 1973 limited foreign participation in management to the proportion of foreign capital in the business.³⁵

A previously overlooked provision of the Foreign Investment Law allows the Foreign Investment Commission to waive the 49% restriction on foreign equity on a case-by-case basis.³⁶ The Foreign Investment Law vests the Foreign Investment Commission with broad discretionary power to increase the maximum 49% foreign equity limit whenever it deems the proposed project beneficial to the Mexican economy. The burden is on the foreign-controlled enterprise to demonstrate that the project will satisfy this goal, while proving that the economic independence of Mexico is not threatened.³⁷ However, “[s]ince the enactment of the 1973 Foreign Investment Law, exceptions to the 49-51% concept have been granted rarely and only under special circumstances.”³⁸ Thus, although Article 8 of the Foreign Investment Law specifically allows foreign equity in a corporation to exceed 49%, the strict application of the general rule appears to have created the illusion that majority foreign equity in a corporation contravened the Foreign Investment Law. Furthermore, the Foreign Investment Commission was at best elusive in setting forth its operating criteria.³⁹

In response to the mounting Mexican economic crisis, 1984 marked Mexico’s decision to implement the selective promotion of industries necessary to stimulate its stagnant economy. In February, the Foreign Investment Commission announced that it would apply the Foreign Investment Law of 1973⁴⁰ with flexibility and would consider permitting foreign capital investment of up to 100% in a significant number of activities—a shock to the international business community.⁴¹ In fact, the

³⁴ *Id.*

³⁵ Maviglia, *supra* note 4, at 290.

³⁶ Foreign Investment Law, *supra* note 2, art. 8.

³⁷ *Id.* at 292.

³⁸ *Id.* at 293. Typically, majority foreign equity has been allowed in such industries as tourism, advanced technology and priority industries. However, such allowance has been conditioned upon the agreement eventually to Mexicanize.

³⁹ Murphy, *supra* note 8, at 448.

⁴⁰ Foreign Investment Law, *supra* note 2.

⁴¹ Maviglia, *supra* note 4, at 281.

law had not changed at all; rather, the regulators had altered their application of the law.

IV. 1984 GUIDELINES

Following a review of the Foreign Investment Law's application, the Foreign Investment Commission acknowledged that it had not always followed a systematic policy for the country's development, although an adequate law existed for direct foreign investments.⁴² The 1984 Guidelines for Foreign Investment reflect the Mexican government's realization that prior regulatory practices concerning foreign investment left room for improvement. While foreign investment will continue to complement domestic investment, the "policy will cease to be merely defensive and [will] turn active and systematic, promoting the formation of foreign investment alternatives, according to need derived from national development priorities."⁴³ In discussing the Guidelines, Maviglia noted that,

because its [Mexico's] foreign investment regulations are largely the result of policy established by an administrative body with broad discretionary powers, it has been difficult in the past to predict how favorably a prospective enterprise might be received. According to the Commission, however . . . the criteria set forth in the National Industrial Development Plan, the Foreign Investment Law and to the list of activities to be promoted under the 1984 Guidelines and obtain a clearer indication as to the conditions to which a company will be subjected and whether they are consistent with its interests.⁴⁴

In the words of the Commission, "The primary objective of the 1984 Guidelines for Foreign Investment is the active, systematic and selective promotion of foreign investment on specific activities considered the most important for a 'fair and balanced growth of the Mexican economy.'"⁴⁵ As further analyzed by Maviglia,

[w]ith respect to the 1984 Guidelines, that promotion is to focus on those areas which will generate a positive foreign exchange balance, produce competitive exports and import substitutions, contribute to national scientific and technological development, advance Mexico's further integration into the international community, involve large investments and create employment and geographical decentralization of industry."⁴⁶

Interestingly, the Guidelines were not published in the *Diario*

⁴² *Id.* at 295, citing NATIONAL FOREIGN INVESTMENT COMMISSION OF MEXICO, FOREIGN INVESTMENTS, JURIDICAL FRAMEWORK AND ITS APPLICATION 12 (1984).

⁴³ NATIONAL FOREIGN INVESTMENT COMMISSION OF MEXICO, FOREIGN INVESTMENTS, JURIDICAL FRAMEWORK AND ITS APPLICATION 14 (1984).

⁴⁴ Maviglia, *supra* note 4, at 304.

⁴⁵ General Resolution of the Foreign Investment Commission, *D.O.*, Aug 30, 1984.

⁴⁶ Maviglia, *supra* note 4, at 304.

Oficial, the official repository of all federal legislation. Rather, they were published in all the major newspapers and distributed in pamphlet form.⁴⁷ The failure to publish the Guidelines in the *Diario Oficial* signified that the change was one of policy rather than of law.⁴⁸ Even though the Foreign Investment Law's allowance for exceptions to the 49% limitation on foreign ownership is essentially only a general principle, "the fact that the Foreign Investment Commission had strictly enforced that limitation with few exceptions for the past eleven years had prompted the erroneous belief that this policy was the law."⁴⁹

A precursor to the Section 5.11 Restructure Agreements appears in the 1984 Guidelines, which allow an increase in the percentage of foreign equity in Mexican companies through the capitalization of debt which may be granted for financially troubled industries on the list of national priorities. However, these measures would only be available where an increase in capital would be indispensable to the survival of the company.⁵⁰

V. ECONOMIC FACTORS LEADING TO THE DEBT/EQUITY SWAP PROGRAM

The restrictive application of the Foreign Investment Law of 1973 produced a decrease in the flow of foreign currency into Mexico through direct foreign investment. As a result, both the private and the public sectors in Mexico increased their foreign borrowing. "Because of the restrictions on foreign investment, many private sector companies financed expansions and purchases of foreign investors' interests with foreign currency loans."⁵¹

Compounding the problem was Mexico's role as a leading oil exporter. Mexico's expectation that oil prices would continue to increase, or at least remain constant, led Mexico to rely almost exclusively on oil revenues as a source of repayment for foreign debt.⁵² At the beginning of the world oil slump, Mexico's 1981 petroleum related exports, projected at \$20 billion, yielded only \$14 billion.⁵³ This drop contributed to the

⁴⁷ *Id.* at 298-99.

⁴⁸ *Id.* at 299.

⁴⁹ *Id.* Although the 1984 Guidelines were not published in the D.O., the correlative resolutions were. *Id.* at 299 n.128.

⁵⁰ 1984 Guidelines, *supra* note 1.

⁵¹ J. Ritch, Foreign Investment in Mexico: The Mexican Public Debt Capitalization Program, Presentation by Ritch to members of the law firm of Ritch, Rovzar y Heather, S.C. Mexico City, February 1987, at G-1.

⁵² *Id.*

⁵³ Deane, *The IMF and Latin America*, THE ECONOMIST, Dec. 11, 1982, at 12.

\$11 billion shortfall in the Mexican current account, which was, included a trade deficit of \$4 billion with the United States.⁵⁴ Further, the world's similar expectation of oil prices caused an aggressive international lending community to view Mexico as an attractive borrower. "As foreign debt expanded and export earnings shrank, it became increasingly obvious that Mexico's external obligations were large not only in absolute numbers but also in terms of Mexico's ability to pay."⁵⁵ "Annual export earnings in 1982 were less than half of the total debt principal and even fell short of its annual debt service cost."⁵⁶

In 1982, because of high inflation in Mexico, peso-purchased dollars fled Mexico in pursuit of relatively inexpensive United States products, United States vacations and the United States dollar itself.⁵⁷ On February 17, 1982, the Banco de Mexico ceased to support the previously "managed float" in the dollar/peso market and allowed the peso to float freely. As a result, the peso fell from twenty-seven to forty-five to the dollar, fueling a further flight of dollars out of Mexico.⁵⁸ On August 5, 1982, the Banco de Mexico again ceased to support the value of the peso, and the currency fell from forty-nine to eighty-six pesos to the dollar.⁵⁹

This foreign debt became increasingly burdensome as the pillars of foreign investment over the years were whittled away. In 1910, foreigners owned more than 50% of the Mexican national wealth.⁶⁰ After the expropriation of the principal oil companies in 1938,⁶¹ foreign investment fell to 8%.⁶² Foreign investment rose to 12% in the 1950s.⁶³ However, during the 1960s, foreign investment again declined to 10% of the nation's wealth.⁶⁴ This number dropped to 4% in 1981.⁶⁵ By 1982, foreign investment constituted only 3% of the national wealth.⁶⁶ Further limiting the supply of Mexico's lendable funds, President José Lopez Portillo, by executive decree, expropriated Mexican private banks.⁶⁷ The evolu-

⁵⁴ Rudintsky, *Why Mañana Came Early*, FORBES, Mar. 15, 1982, at 33.

⁵⁵ Murphy, *supra* note 8, at 10.

⁵⁶ *Id.*

⁵⁷ *Id.* at 11.

⁵⁸ S. WISE & H. ORTIZ DIETA, *LA NACIONALIZACIÓN DE LA BANCA* (1982).

⁵⁹ Murphy, *supra* note 8, at 11. The peso continued to fall in value against the dollar at a precipitous rate. In fact, recent exchange rates have been approximately 2,500 pesos to the dollar, giving the peso a value of almost 1/100th of that it once had.

⁶⁰ H. WRIGHT, *supra* note 5, at 53.

⁶¹ *Id.* at 60, 78.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 51.

⁶⁵ U.S. DEP'T OF COMMERCE, *OVERSEAS BUS. REP.* 81-09, May 1981, at 16.

⁶⁶ Rout, *Mexico's Leader Nationalizes Domestic Banks*, *Wall St. J.*, Sept. 2, 1982, at 2, col. 2.

⁶⁷ Operating Manual, *supra* note 3, at G-48.

tion of the Mexican economy has made it possible for a great number of companies to obtain additional resources to carry out expansion or to make payments of interest and principal on their foreign debt. These companies have been filing requests for the capitalization of their foreign debts through the mechanism of replacement of public debt with investment under Provision 5.11 of the Public Sector Debt Restructure Agreement.⁶⁸

VI. DEBT/EQUITY SWAP PROGRAM NOT ENACTED THROUGH LEGISLATION

In the context of Mexico's legislative, administrative and economic history, it is understandable that Mexico has implemented a significant economic tool such as the Debt/Equity Swap Program, not through legislation,⁶⁹ but rather by using available administrative powers to reshape the rather malleable Foreign Investment Law of 1973. The Debt/Equity Swap Program, although only a product of administrative policy and procedure, finds its underlying authorization in the Foreign Investment Law of 1973. According to the Operating Manual for the Capitalization of Liabilities and Replacement of Public Debt with Investment, Article 8 of the Foreign Investment Law regulates the capitalization of debt.⁷⁰ However, although Article 8 does extend to the Mexican government the jurisdictional authority necessary to implement the Debt/Equity Swap Program, it never specifically refers to any type of debt/equity swap mechanism. Rather, Article 8 is the same provision allowing foreign ownership. This provision reappeared and became the focus of the 1984 Guidelines for Foreign Investment when Mexico realized the necessity of foreign investment to stimulate the economy. The first paragraph of Article 8 specifically referred to by the Operating Manual is the provision permitting, with approval by the National Commission of Foreign Investment, an enterprise to exceed the 49% limit on foreign ownership.⁷¹

Further, the Debt/Equity Swap Program responds to Mexico's economic goals articulated in the 1984 Guidelines for Foreign Investment. The thrust of these economic goals is to apply new schemes, within the framework of the Foreign Investment Law of 1973, necessary to stimu-

⁶⁸ *Id.* at G-19.

⁶⁹ Maviglia, *supra* note 4, at 283. Typically, federal legislation is enacted by Congress which rarely does more than give rubber stamp approval to the executive. The President promulgates the legislation, by publishing it in the *Diario Oficial de la Federación* in order that the legislation becomes effective. Maviglia, *supra* note 4 at 283-84 (citing H. WRIGHT, *supra* note 5, at 16).

⁷⁰ Operating Manual, *supra* note 3, at G-22.

⁷¹ Foreign Investment Law, *supra* note 2. *Ley general de la deuda pública*, D.O. Dec. 31, 1976.

late productive activity in Mexico.⁷² Thus, in the early 1980s, the Mexican administration evaluated the state of the Mexican economic crisis and decided to shed its policy of rigidly enforcing the 49% limitation on foreign equity in Mexican enterprises.

This new policy emphasis, memorialized in the 1984 Guidelines for Foreign Investment, was meant to stimulate an economy that, by the mid-1980s, had drifted further towards economic destabilization. Thus, Mexican officials again looked to the flexibility offered in the first paragraph of Article 8 of the Foreign Investment Law of 1973 when creating a debt/equity swap mechanism that could potentially attract foreign investment, technology and dollar accounts to Mexico.

Mexico's debt/equity swap mechanism originally materialized during negotiations between foreign currency creditors, the Mexican government and other Mexican public sector debtors concerning Mexico's public sector debt. On September 8, 1984, acting through its Ministry of Finance and Public Credit, Mexico informed the international banking community of its plan to restructure Mexican public sector debt owed to commercial banks maturing between 1985 and 1990. On August 19, 1985, the Mexican government and the foreign lending banks negotiated new restructure agreements between the State of Mexico as Obligor (Debtor), each Mexican Public Sector Obligor, Mexico as Guarantor and the foreign lending banks.⁷³ These negotiations resulted in the public sector restructure agreement dated August 29, 1985.

What has in essence become law authorized jurisdictionally by Article 8 of the Foreign Investment Law of 1973 and supported by the framework of the 1984 Guidelines for Foreign Investment was originally conceived by Mexican public sector debtors and the international banking community in an attempt to solve the Mexican debt crisis. This pragmatic solution employs an administrative policy which weaves its way through the jurisdictional framework and intent of prior law. The economic pragmatism and political reality of this mechanism is best illustrated by the parties necessary to its livelihood. Each debt/equity swap transaction must be negotiated by the business entities with a financial stake in the debt as well as be authorized by the appropriate administrative bodies. The debt/equity swap transaction necessarily involves an agent of the relevant Mexican public sector (for example, Pemex), the

⁷² J. Alvarez Soberanis, *Foreign Investment in Mexico Today*, presentation by Alvarez Soberanis, General Director of Foreign Investment, Ministry of Industrial Promotion and Trade, to the ABA Section of International Law and Practice, the State Bar of Texas Section of International Law, and the Inter-American Bar Association in Houston, Texas, Oct. 9, 1987, at 16-17.

⁷³ J. Ritch, *supra* note 51, at G-5.

obligor, Mexico, and the foreign bank holding the credit. The debt/equity swap transaction also requires the governmental authorization of the Mexican Ministry of Finance and Public Credit, the National Commission on Foreign Investment and the Ministry of Foreign Relations.⁷⁴

The original restructure agreements depended as well upon Section 5.11, the basis for the Debt/Equity Swap Program. Section 5.11 is hidden in the Article of Agreements entitled "Other Payment Provisions" as an exception to the requirements guaranteeing equal treatment of lenders. Although "little attention was paid to Section 5.11 when the Agreements were signed and no immediate action was taken to implement them,"⁷⁵ this provision is the basis for the current debt capitalization/conversion program.

VII. MECHANICS OF SECTION 5.11

The debt/equity swap program is designed to convert Mexican public sector debt into foreign private investment in Mexican companies. The possibility of exchanging the rights of collection of the Mexican public external debt into equity in public or private Mexican corporations constitutes the key element of this mechanism.⁷⁶ Provision 5.11 of the Public Restructure Agreement states that, "all or a portion of the Credits held by such Bank may be exchanged for qualified capital stock."⁷⁷ This transformation process cancels all or a portion of the Mexican public sector debt in exchange for "Qualified Capital Stock." Section 5.11 sets forth the steps of procuring a debt/equity swap:

Upon delivery of such Qualified Capital Stock by or on behalf of the Obligor to such Bank or its designee, (i) each Credit (or portion thereof) in respect of which such Qualified Capital Stock is delivered shall cease to be a "Credit" and "External Indebtedness" for all purposes of this Agreement and the Obligor shall have no further obligation with respect to any such Credit (or portion thereof) and (ii) the Obligor and such Bank shall deliver to the Servicing Bank a correction notice reducing the principal amount of such credit by the principal amount exchanged for such Qualified Capital

⁷⁴ *Mexican Capitalization Program*, INT'L FIN. L. REV., Sept. 1986, at 13. Each debt/equity swap transaction is documented by an agreement "to be signed by the vendor bank, the foreign investor and its Mexican subsidiary and the Mexican government in order to assure the foreign investor the viability of its concrete operation." J. Alvarez Soberanis, *supra* note 72, at 23.

⁷⁵ J. Ritch, *supra* note 51, at G-5.

⁷⁶ J. Alvarez Soberanis, *supra* note 72, at 18. Antecedents to the Mexican Debt/Equity Swap Program were the programs legislated by Chile, Brazil and the Phillipines. See BANCO CENTRAL DE CHILE, ADQUISICIÓN DE DEUDA EXTERNA, Ch.18; CENTRAL BANK OF THE PHILLIPINES, PROGRAM FOR THE CONVERSION OF PHILLIPINE EXTERNAL DEBT INTO EQUITY INVESTMENTS, 13 (1986).

⁷⁷ Operating Manual, *supra* note 3, at G-8.

Stock.⁷⁸

Thus, Mexican public debt can be transformed into investment in Mexico in the form of a security titled "Qualified Capital Stock".

An example of a debt/equity swap illustrates the procedures necessary to satisfy the goals of this program. Assume that Ford Motor Corporation ("Ford") wishes to establish a new wholly-owned subsidiary in Mexico.⁷⁹ This new subsidiary, called Ford Mexicana, plans to export 90% of its production to the United States and will locate its plant in northern Mexico. In addition, Ford Mexicana plans to employ state-of-the-art technology using primarily Mexican raw materials. Such plans satisfy Mexico's goals to attract high technology, increase exports and foreign currency and decentralize industry away from Mexico City.⁸⁰ Because the proposed investment satisfies such criteria, the Mexican government would approve Ford's use of the debt/equity swap mechanism. Thus, Ford would purchase one million dollars of Mexican public debt from a United States bank at 60% of the face value of the debt.⁸¹

This debt would subsequently be transformed into \$950,000 of capital invested into Ford Mexicana and \$50,000 worth of pesos in cash.⁸² As a result of the capitalization, Ford would receive shares of stock equal to the net payment in pesos.⁸³ The Mexican subsidiary, Ford Mexicana

⁷⁸ J. Ritch, *supra* note 51, at G-14. The mechanical aspects of a debt/equity swap closing consist of the following:

1. Cancellation of Credits representing public sector foreign currency debt;
2. Delivery of peso proceeds of the cancellation to the Mexican corporation being capitalized and the pesos are held by the Treasury of the Federation in the company's name bearing interest at market rates, or used directly to satisfy domestic debts);
3. Issue by the Mexican corporation of Qualified Capital Stock represents the capital contribution;
4. Delivery of the qualified Capital Stock to the foreign investor.

Note that although never specifically referred to, the nature of the debt/equity swap mechanism probably qualifies the issue of the new "Qualified Stock" under an exemption from registration and reporting requirements of the Mexican securities laws. See generally, Creel Carrera and Martin del Campo y Souza, *A Public Stock Offering in Mexico*, 16 INT'L L. & POL. 305 (1984).

⁷⁹ Based on example in J. Alvarez Soberanis, *supra* note 72, at 21-23. On May 23, 1986, a Japanese automobile manufacturer, Nissan de Mexico, participated in the first debt/equity swap transaction involving \$54.5 million. Sesit, *Nissan Raises Funds in Pesos by Buying Mexican Loans Held in the U.S., Europe*, Wall St. J., June 25, 1986, at 35, col. 1. Between May and December of 1986, sixteen transactions transpired involving \$300 million. J. Ritch, *supra* note 52, at G-17.

⁸⁰ Such policy will be discussed later in this article. See *infra* text accompanying notes 117-20.

⁸¹ The market price of the Mexican debt paper, of course, varies. For example, in August of 1986, Shearson Lehman Brothers International, Inc. valued such paper at \$.56. During the third quarter of 1987, Morgan Stanley placed the value at \$.47-.48.

⁸² The discount percentage applied to the transaction will be discussed later in the article. See *infra* notes 123-27.

⁸³ Estrella, *Making the Most of Mexican Debt/Equity Swaps*, INT'L FIN. L. REV., Oct. 1987 at 35.

must deposit these pesos in a Federal Treasury Account,⁸⁴ and may only use these pesos in investments approved by the Foreign Investment Commission and the Ministry of Finance and Public Credit.⁸⁵ Subsequently, the Mexican Government delivers the pesos directly to the subsidiary's suppliers in payment for the goods and services which compose the debt/equity approved investment.⁸⁶

The debt/equity swap mechanism cannot be used to pay loans obtained from foreign banks or to pay foreign parent companies of Mexican subsidiaries, or to import machinery from outside of Mexico.⁸⁷ Generally, the pesos cannot be sent abroad.⁸⁸ "In this regard we believe that the resources obtained through the mechanism must be used within the country in order to reactivate the economy and preferably in new investment activities which will be carried out in Mexico."⁸⁹ For example, the mechanism can be used to pay Mexican suppliers, credits with Mexican banks, or FICORCA (the Mexican trust for coverage of exchange rate fluctuation).

IX. CONSTITUTIONALITY OF THE DEBT/EQUITY SWAP PROGRAM

The definition presently given to "qualified capital stock" necessarily excludes Mexican companies and individuals from participating in the debt/equity swap program. "Qualified capital stock" is defined as capital stock of any Mexican public sector entity of Mexican private sector company (i) which is issued in registered, certified form in the name of such Bank or a Person designated by such Bank *which is not a Mexican Entity* (as defined below), (ii) which is not transferable on the registration books of such public sector entity or private sector company before January 1, 1998 to any Mexican Entity⁹⁰

"Mexican Entity" is defined as:

any Person who, in the case of an individual, is a resident of or, in the case of an entity, has its principal place of business in the United Mexican States.⁹¹

Thus, a Mexican national is not allowed to purchase Mexican public sector debt at a discount and convert such debt into equity ownership of a Mexican enterprise. Obviously, this program on its face discriminates against Mexicans. Therefore, one could argue that the program violates

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ J. Alvarez Soberanis, *supra* note 72, at 19.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Operating Manual, *supra* note 3, at G-48 (emphasis added).

⁹¹ *Id.*

Article 1 of the Mexican Constitution, which provides that all individuals are entitled to equal treatment in the United Mexican States.⁹² The present Debt/Equity Swap Program certainly prohibits Mexican nationals and Mexican corporations from taking advantage of the low cost of investment in Mexican companies through the cancellation of Mexican public debt.

This prohibition against Mexican participation in the debt/equity swap program was intended to prevent the occurrence of "round tripping." Roundtripping occurs when pesos leave Mexico to purchase dollars in the form of foreign debt and then return to purchase "cheap" pesos as a form of investment. This prohibition has probably not been entirely effective, as Mexicans can potentially circumvent this restriction through the establishment or purchase of existing United States "shell" corporations. Such United States "shell" corporations afford the Mexican national a United States corporate identity and circumvent the restriction.

On March 20, 1987, during negotiations for fresh money, the debt/equity swap program was modified to legalize the possibility of allowing Mexican nationals the option of participating in the swap mechanism.⁹³ The Mexican government has not yet implemented this proposed modification.⁹⁴ However, such a change would have important effects on the Mexican economy. Most importantly, the provision would encourage repatriation of the Mexican money that has steadily left Mexico during the economic crisis. Mexicans would be able to reinvest in their own companies and in their own country at a discount. Ironically, however, this plan could seriously restrict the Mexican public debt presently available to foreigners to convert into Mexican equity.

X. OPERATING MANUAL FOR THE CAPITALIZATION OF LIABILITIES AND THE REPLACEMENT OF PUBLIC DEBT WITH INVESTMENT.

Initially, the Debt/Equity Swap Program was implemented without the publication of laws or regulations. The actual debt-for-equity transactions negotiated by Mexican public sector debtors and foreign creditors predated the promulgation of any type of government regulations on the subject. Eventually, rules developed as foreign banks and foreign investors approached the Ministry of Finance and Public Credit with proposed rules. Ultimately, during July of 1986, the rules were embodied in

⁹² MEXICAN CONSTITUTION, art. 1.

⁹³ *Swap Delays Worry Potential Investors*, LAT. AM. WEEKLY REP., Sept. 10, 1987, at 8.

⁹⁴ *Id.*

the "Operating Manual for the Capitalization of Liabilities and the Replacement of Public Debt with Investment" ("Operating Manual" or "Manual").⁹⁵ This Manual was prepared by the National Commission of Foreign Investment to facilitate the implementation of the debt swap program.⁹⁶ The official publication of a manual by an administrative body is authorized by Article 19 of the Organic Law of Public Administration.⁹⁷

The Manual communicates the function of an administrative body and coordinates the procedures necessary to employ such an administrative agency.⁹⁸ Thus, the Operating Manual for the Capitalization of Liabilities and the Replacement of Public Debt with Investment is jurisdictionally authorized and has legal effect.

The purpose of the Operating Manual is threefold. First, it places the Debt/Equity Swap Program within the context of the Foreign Investment Law of 1973 and of Section 5.11 of the Restructure Agreements. The Manual stresses that the Debt/Equity Swap Program fulfills the spirit of the Foreign Investment Law and does not modify it.⁹⁹ Second, the manual describes the procedures for obtaining proper Mexican authorization,¹⁰⁰ informing the international and Mexican business communities as to the structure and function of the administrative agencies involved.¹⁰¹ Third, the manual sets forth the general priority industries, export requirements, and geographic location for approval of a debt/equity swap transaction by the Foreign Investment Commission.¹⁰² This informs the business community as to the political and economic objectives of the administrative agencies and thus, facilitates the application process for both the business entities and the Mexican administrative bodies.¹⁰³

XI. THE INTERPLAY BETWEEN ADMINISTRATIVE MANUAL POLICIES, 1984 GUIDELINES AND THE FOREIGN INVESTMENT LAW OF 1973

The Operating Manual clearly sets forth the jurisdictional umbrella

⁹⁵ J. Ritch, *supra* note 51, at G-10.

⁹⁶ Operating Manual, *supra* note 3, at G-19.

⁹⁷ Ley orgánica de la administración pública federal, *D.O.*, Dec. 29, 1976.

⁹⁸ *Id.*

⁹⁹ J. Ritch, *supra* note 51, at G-10.

¹⁰⁰ *Id.*

¹⁰¹ Manuales Administrativos. Guías Para Su Elaboración. Colección: Guías Técnicas. Serie Organización y Métodos No. 3, at 9 [hereinafter Manuales Administrativos].

¹⁰² J. Ritch, *supra* note 51, at G-10.

¹⁰³ Manuales Administrativos, *supra* note 101, at 9.

and administrative body which authorize the Debt/Equity Swap Program. The Manual quotes from General Resolution 5, regarding the Foreign Investment Law, "in the case that the relevant acquisition is proposed through the capitalization of liabilities or are investment of profits, the prior authorization of the National Foreign Investment Commission will be required."¹⁰⁴

The Operating Manual establishes several of the Debt/Equity Swap Program's objectives. Such objectives include reactivating the economy through promotion of direct foreign investments, reducing the foreign debt and aiding the financial problems of existing domestic enterprises. As one Mexican official stated, "We are trying to show the world that Mexico is facing its responsibilities and exploring possibilities with a strong desire to get back into the right track."¹⁰⁵

The Debt/Equity Program's policy of selective promotion of industry effectively complements Mexico's 1984 Guidelines for Foreign Investment. Both programs intend to direct foreign investment toward specific areas considered vital to the reactivation of Mexico's economy. However, Mexico, now more than ever, recognizes its dire situation and its competition among other debtor nations in attempting to attract foreign investment. As one high-ranking official in the Foreign Investment Commission noted, "Mexico is nowadays a prime target for D.F.I. and my government has assumed a different attitude towards it."¹⁰⁶

Mexico has positioned itself as a highly attractive target indeed. Specifically, Mexico has gained entry into the General Agreement on Tariffs and Trade ("GATT"). This membership will open Mexico's economy to external competition and will continue Mexico's efforts toward economic liberation, i.e. removing laws which protect certain Mexican-made products from foreign competitors.

Mexico views direct foreign investment as a possible complement to the existing natural resources which can stimulate job creation, substitution of imports, generation of exports, technological development, and aid in the improvement of Mexico's balance of payments.¹⁰⁷ "The direct

¹⁰⁴ Operating Manual, *supra* note 3, at G-22.

¹⁰⁵ J. Alvarez Soberanis, *supra* note 72, at 24. However, it is important to note that the Mexican Debt/Equity Swap Program has been temporarily suspended due to the potentially extreme inflationary effects that the program may have. The inflationary effect is caused by Mexico's merely printing up the pesos necessary to capitalize the corporation. For example, it is estimated that every one hundred million dollars of cancelled debt causes a 3-5% increase in the national inflation index.

¹⁰⁶ J. Alvarez Soberanis, *supra* note 72, at 7. For example, the Federal Executive power of Mexico has created the Under Secretariat for Foreign Investments Regulation and Technology Transfer as a branch of the Ministry of Commerce and Industrial Development in order operationally to support the National Development Plan.

¹⁰⁷ *Id.* at 2-3.

foreign debt conversion program is designed to promote direct foreign investment in Mexico and at the same time, pay off in advance Mexico's public foreign debt, without an outflow of foreign currency reserves."¹⁰⁸ Clearly, the Mexican government's outlook has not changed since the 1984 Guidelines were published; rather, Mexico has developed an aggressive attitude toward attracting foreign investment to Mexico. Although this recent development strays from the policies of the 1970s era of highly restrictive foreign investment, Mexico's current objectives are still philosophically consistent with the Mexican Revolutionary goals of the early twentieth century. The current Mexican administration still strives to maintain Mexico's economic destiny through a highly regulated program of attracting foreign debt through the conversion of the public debt for equity.¹⁰⁹

The policy followed in accepting majority-owned direct foreign investment through debt/equity swaps influenced the Guidelines for Foreign Investment published in February of 1984, in the National Program for Industrial Development and Foreign Trade of 1984-1988, and in the new grouping of the General Resolution of the National Commission for Foreign Investment. Clearly, the Debt/Equity Swap Program's intent is to maintain its policy "[i]n compliance with the policy of selective promotion of foreign investment included in the National Development Plan and in accordance with Clause 5.11 of the Restructuring Agreement of the Foreign Public Debt"¹¹⁰ The Foreign Investment Commission will permit an increase in foreign investment only if the proposed transaction accords with the restrictions of the applicable laws and after a careful analysis determines that the increase in the capital is indispensable to the survival of the Mexican enterprise.¹¹¹

The National Development Plan of 1983-1988 includes a set of guidelines to increase the share of technological, administrative and financial resources from abroad necessary for Mexico's economic development.¹¹² However, in accordance with Article 4 of the Foreign Investment Law, the petroleum, electricity, railroad and basic petrochemical industries remain 100% reserved to the State of Mexico.¹¹³ The radio and television industries remain reserved to Mexican Nationals,¹¹⁴ and the automotive parts industry must maintain at least 60%

¹⁰⁸ Estrella, *supra* note 84, at 35.

¹⁰⁹ Ollard, *The Debt Swappers*, EUROMONEY, Aug. 1986, at 69.

¹¹⁰ Operating Manual, *supra* note 3, at G-19.

¹¹¹ *Id.* at G-23.

¹¹² J. Alvarez Soberanis, *supra* note 72, at 4.

¹¹³ Operating Manual, *supra* note 3, at G-27.

¹¹⁴ *Id.*

Mexican ownership.¹¹⁵

A. System of Priorities

The Manual regulating the debt/equity swap mechanism sets up a system of priority industries, priority geographic locations, and priority technologies to attract specific types of industry to specific regions of Mexico.¹¹⁶ Those debt/equity swap proposals that satisfy these criteria are likely to gain the governing bodies' approval. Almost as important, such proposals which satisfy certain criteria will reap greater financial returns on the exchange of cancelled Mexican public sector debt for capital in the enterprise. For example, companies which, through exports, will have a foreign exchange surplus in their balance of payments will be characterized as having first priority for approval by the Foreign Investment Commission when considered for the debt/equity swap transaction.¹¹⁷ Similarly treated are companies which will supply advanced technology with their proposed projects.¹¹⁸ Also, products manufactured with a high level of Mexican content fall into this category. Surprisingly, debt/equity swaps resulting 100% foreign ownership may also receive consideration as a first priority proposal.¹¹⁹

In a General Resolution issued by the National Commission of Foreign Investment during November 1986, Mexico expressed its policy toward attracting small and medium-sized foreign-based enterprises through the debt/equity swap mechanism.¹²⁰ For example, businesses which employ between 250 and 500 employees (and satisfy other criteria)¹²¹ will not require authorization from the Commission of Foreign Investment. The Mexican Administration's rationale is that small and medium-sized businesses typically serve as the technological vehicles for the large, multinational corporations. Because of their smaller size, these businesses will need Mexican management. Also, due to their smaller political leverage, these companies will be unable to mandate that the technology at some point leave the country. Thus, again, the present Mexican Administration is attempting to reactivate the economy through the selective promotion of certain types of enterprises granted priority status through the debt/equity swap mechanism.

Also, the use of future proceeds by the enterprise will similarly aid

¹¹⁵ *Id.*

¹¹⁶ *Id.* at G-24.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ J. Alvarez Soberanis, *supra* note 72, at 9.

¹²¹ *Id.* at 10.

in determining which level of priority the proposed debt/equity swap transaction will receive by the Commission of Foreign Investment. For example, capital invested in Mexican fixed assets, payment of peso debt to Mexican banks and payment of peso debt owed to FICORCA will prioritize the debt/equity swap transaction at the highest level.¹²² The purpose of such selective promotion is obvious: Mexico does not want the proceeds generated by this mechanism to be used to purchase foreign exchange, which would defeat the purpose of the program.

B. Application of Discount

The discount percentage applied to the debt/equity swap transaction is the number of pesos that will be used to capitalize the target company per United States dollar of Mexican public debt cancelled.¹²³ However, the percentage number is actually the percentage that will be subtracted from one hundred percent of the value of the cancelled foreign debt in pesos. Thus, the lower the percentage, the greater the value to the foreigner.

The discount negotiated by the Ministry of Finance and Public Credit is used to promote selectively certain types of industry to certain geographic locations in Mexico.¹²⁴ The higher the priority of the use of funds, the lower the discount. The Operating Manual states that, "(t)he percentage of discount at which the Mexican government or other public debtor entities shall redeem their debt shall be fixed in accordance with the benefits that the transaction implies for the development of the country."¹²⁵

The discount percentage to be applied varies from 0-25%. For example, a 5% discount will be applied whenever the new corporation or the already existing one will export 80% or of the new production and will aid in the surplus of its balance of payments.¹²⁶ A zero discount percentage will be used when the transaction involves the purchase of a government-owned company.¹²⁷

XI. CONCLUSION

The Mexican Debt/Equity Swap Program, like the 1984 Guidelines

¹²² Operational Manual, *supra* note 3, at G-11.

¹²³ *Id.* at G-13. Once the discount has been applied, the amount of pesos to be delivered is determined by averaging the free rates of exchange of three Mexican exchange houses. *Id.* at G-30.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ J. Alvarez Soberanis, *supra* note 72, at 20.

¹²⁷ J. Ritch, *supra* note 51, at G-12.

for Foreign Investment, presents the illusion that such a program has been thoughtfully promulgated by the legislature. In fact, the debt/equity swap mechanism is more of a pragmatic solution hammered out by parties attempting to avert an economic crisis. This mechanism was eventually supported by the publication of the Operating Manual, a memorialization of the administrative policy of the Foreign Investment Commission. The Operating Manual, which was granted legal validity under Mexican administrative law, explains the policy and mechanics of the Debt/Equity Swap Program. In addition, it points to the jurisdictional foundation for such a program, Article 8 of the Foreign Investment Law. Most important, the Operating Manual clearly sets forth that the Debt/Swap Program is a continuation of the 1984 Guidelines' policy to attract foreign investment to Mexico through application of the once-shrouded foreign investment law exception allowing foreign equity in a Mexican corporation to reach majority interest.

In sum, the debt equity swap is but one further example of the machinations that one finds in the interplay between the stated law and its administration in the Mexican legal system. However, it is fair to say that the recent economic difficulties have forced a greater union between law and policy which must ultimately be to the benefit of Mexico and those investing in its future.