

In response to various inquiries regarding Mexico's ongoing suspension of non-essential businesses until April 30, 2020, the following high-level executive summary of the current closure of non-essential businesses is provided, as well as some commentary related to the same.

- On March 31, the federal government of Mexico declared a national event of *force majeure* in relation to COVID-19 (the **Force Majeure Decree**). www.dof.gob.mx/nota_detalle.php?codigo=5590914&fecha=31/03/2020
- Among the various mitigating orders issued as part of the Force Majeure Decree, all **non-essential businesses** in the country were ordered to suspend their operations from March 30, 2020, until April 30, 2020.
- Non-essential businesses are defined by exclusion. That is, the Force Majeure Decree defines what is an **essential business**. All businesses not included within the categories of essential businesses are to be considered non-essential.
- On April 6, 2020, the federal government of Mexico published a short set of guidelines (the **Guidelines**) that clarified and expanded upon the interpretation of certain of the essential businesses initially designated in the Force Majeure Decree. www.dof.gob.mx/nota_detalle.php?codigo=5591234&fecha=06/04/2020
- Below is an informal English language translation of the relevant section (First Article, Fraction II) of the Force Majeure Decree defining the essential businesses, together with the related explanatory commentary provided by the Guidelines. **Essential businesses are defined as follows:**
 - Businesses that are directly necessary to attend the health emergency, such as labor activities in the medical and paramedical fields, and administrative and support activities throughout the National Health System. Also, businesses that provide supplies and services to such businesses, emphasizing the pharmaceutical sector, both in production and distribution (i.e., pharmacies); the manufacture of supplies, medical equipment and technologies for healthcare; businesses involved in the proper disposal of biological-infectious hazardous waste, as well as cleaning and sanitizing medical units at all different levels of healthcare.
 - Businesses involved in public safety and citizen protection; in the defense of national integrity and sovereignty; in the justice system; and legislative activity at the federal and state levels.
 - Businesses involved in the following fundamental sectors of the economy: finance; tax collection; distribution and sale of energy, gas and gas stations; generation and distribution of potable water; the food and non-alcoholic beverages industry; food markets, supermarkets, self-service shops, grocery and prepared food sales; passenger and cargo transportation services; agricultural, fishing and livestock production; agribusiness; the chemical industry; cleaning products; hardware stores; courier services; guards in private security tasks; daycare centers and nurseries; homes and facilities for the elderly; shelters and care centers for women victims of violence and their children; telecommunications and information media; private emergency services; funeral and burial services; storage services; and cold chain of essential supplies, logistics (airports, ports and railways); as well as **activities whose operation would be irreversibly affected due to their suspension** (emphasis added).
 - Note: While the bolded text above would appear to provide a broad exception to the suspension of additional businesses not otherwise listed that would be irreparably harmed by such a suspension, the Guidelines "clarify" that such businesses are to be understood to be those in the steel, cement and glass industries, as well as information technology that guarantees the continuity of information systems in the public, private and social sectors. Those businesses in the steel, cement and glass industries that wish to claim such an exception (no mention is made of the IT businesses), needed to file for such an exception with the Ministry of Economy within 24 hours of the publication of the Guidelines. Any such exception should be limited to only those minimum activities that would avoid irreversible impacts on the business' operations. Any such businesses in the steel, cement and glass industries that have pending contracts with the federal government in relation to four specific projects (identified by name) or on any indispensable projects with Pemex or CFE (state-owned utility) are also expressly permitted to continue operations.
 - Note: The Guidelines clarify that e-commerce activities are included within "courier services" identified as essential above.

- Businesses directly related to the operation of government social programs.
- Businesses necessary for the conservation, maintenance and repair of critical infrastructure that ensures the production and distribution of essential services, including potable water, electrical energy, gas, oil, gasoline, jet fuel, basic sanitation, public transportation, hospital and medical infrastructure, among others that could be listed in this category.
 - Note: The Guidelines clarify that “electrical energy” includes coal mines and coal distributors (with respect to their transportation and logistics activities), but only to the extent necessary to meet CFE’s demands. Such businesses also had 24 hours as of the publication of the Guidelines to seek to be designated as essential.

There are additional health-related mitigating decrees included within the Force Majeure Decree. Of significance to the business side of things, there is a general restriction on congregations or meetings in excess of 50 persons. There is confusion on how this affects the number of customers that a shop may serve at one point in time.

Observations and Commentary

- The Ministry of Foreign Affairs is trying to balance the gradual opening up of economy (demonstrated in the gradual opening of certain industries as reflected in the Guidelines), while controlling the health effects of the pandemic.
- President Lopez-Obrador has also recently announced the Ministry of Economy will undergo a rigorous study of what additional sectors may be able to open as additional “essential” sectors.
- President Lopez-Obrador has at least informally suggested that the Mexican automotive industry could begin production three to five days prior to the re-launch of production in the US – this, to help reestablish the production chain with the US. In essence, the statement recognizes the integration of at least the Mexican-US automotive industry.

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