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Mexico's New BIT with Hong Kong: AMLO's Wink to Chinese Investments?

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As he embarks on the second half of his term, Mexico's President, Andres Manuel López Obrador (known as "AMLO"), continues to fight foreign investors in a myriad of sectors. By now it is clear that his presidency will be marked by his stance against the private sector and previous administrations which, in his view, "pillaged Mexico during the neoliberal era" (to quote one of Mr. López Obrador's recurrent mantras).

The list is extensive. In the last three years AMLO and his cadres have [scrapped Mexico City's new airport](#), [cancelled renewables auctions](#) and [a brewing plant](#), [threatened to phase-out corn imports](#) and called to [expropriate lithium ores](#). In the coming days, Mexico's Congress will hold a decisive vote on a constitutional counter-reform in the energy sector which has already [strained diplomatic ties](#) and is questioned for its effects on existing investments and international treaties, like the [USMCA](#) — a treaty that AMLO inherited but did not promote.

Amid an unstable climate for foreign investment, it is unsurprising that under AMLO Mexico has ceased to expand its wide network of bilateral investment treaties ("BITs"). But there is one exception: in June 2021 a [new BIT](#) between Mexico and Hong Kong ("Hong Kong BIT") came into force.

In an official [letter](#) sent to Congress asking it to ratify the Hong Kong BIT— and in a tone that refutes his political narrative— AMLO advocates for investor protection, emphasizing that during the past years Mexico has made efforts to consolidate its position as an attractive destination to foreign investment and, in that context, BITs ensure foreign flows of capital which constitute a "fundamental supplement to promote economic growth and offer broader opportunities to achieve social wellbeing." In the same letter, AMLO indicates that BITs have allowed Mexico to integrate into the world's economy as they "promote greater stability in the rules that govern foreign direct investment" and "stimulate competition and the enterprise spirit with the objective to ameliorate life conditions and the general wellbeing of the population by fostering development and economic growth." AMLO concludes that the Hong Kong BIT is compatible with Mexico's legal system and consistent with its National Development Plan, as it "contributes to place Mexico as a solid economy in the mid and long term which will strengthen its capacity to attract foreign capital and secure the position of the Mexican State as a receiver of foreign direct investment."

On June 16, 2021, Mexico's Ministry of Economy [hailed](#) the new BIT for offering legal certainty that will ensure competition and heighten legal security to investors and investments of both parties

alike.

Mexico already had one [BIT](#) in place with the People's Republic of China, signed in 2008 and which is still in effect. Yet, as some commentators [noted](#), it was unclear whether that treaty would cover investments made by Chinese investors who channeled their investments through Hong Kongese entities (a frequent practice for Chinese international ventures).

The Hong Kong BIT maintains a similar structure to the country-to-country BITs signed by Mexico during the last decade, including the one with the People's Republic of China. The treaty, for example, affords Hong Kongese investors standard protections such as fair and equitable treatment and full protection and security (aligned with customary international law principles). The Hong Kong BIT also sets forth compensation based on fair market value in the event of expropriation, and non-discrimination guarantees, among others safeguards. Were injury to be inflicted, Hong Kongese investors can avail of treaty arbitration without resorting to Mexican courts.

The signing of the Hong Kong BIT comes at a strategic time for [Chinese investors in Mexico](#), which will now have an additional alternative to protect their investments through the use of Hong Kongese vehicles.

There already are some examples of Chinese investments that could be protected in Mexico by means of the Hong Kong BIT, which applies to investments made prior to its entry into force. In December 2020, a consortium led by Beijing-based China Railway and Construction Company (CRCC) won a bid to refurbish Mexico City's subway line 1 for approximately US\$ 1.8 billion. As gleaned from [the public contract](#), CRCC executed the agreement with at least one Hong Kongese entity as guarantor. Also, in 2020, China's State Power Investment Corporation (SPIC) acquired Zuma Energía, one of Mexico's largest players in renewable energies, [through a Hong Kongese company](#).

In executing the Hong Kong BIT AMLO's administration has made a concession to Chinese (Hong Kongese) investors in Mexico, enhancing their protection under a new investment treaty. Whether AMLO and his team are amenable to foreign investment and will observe international obligations is less clear. It might just be that AMLO's stance regarding foreign investment and a stable legal framework hinges on the nationality of foreign investors.

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