

Compatibility of Annex 23-A of the USMCA with the Initiative to Amend the Mexican Ley Federal del Trabajo

<p style="text-align: center;">Annex 23-A Worker Representation in Collective Bargaining in Mexico</p>	<p style="text-align: center;">Initiative to Amend the Ley Federal del Trabajo</p>
<p>2.(a) Obligation to provide in its labor laws, the right of workers to engage in collective bargaining, join the union of their choice, and prohibit, in its labor laws, employer domination or interference in union activities, discrimination, or coercion against workers for union activity, and refusal to bargain collectively with the duly recognized union.</p>	<ul style="list-style-type: none"> • Article 357.- Workers and employers have the right to establish the organizations they deem appropriate; as well as the right to join a preexisting one, as long as they observe the applicable bylaws of such organizations. Workers and employers´ organizations shall be protected against all actions of interference. • Article 358.- Members of unions, federations and confederations have the right to associate freely and to participate in these organizations. No person shall be coerced to participate or not in a union, federation or confederations. • Article 386 Bis.- The support of workers through a personal, free, and secret vote constitutes a guarantee for the protection of the freedom to collective bargaining and their legitimate interests. The demonstration of such support in accordance with the processes established under Articles 390 and 390 ter (worker’s consultation process) of public order and social interest and thus a requirement for the validity of collective bargaining agreements. The authorities, unions and employers shall cooperate to ensure that consulting processes do not affect work activities. • Article 387.- The employer that employs members of a union shall be obliged, when requested, to negotiate with them a collective bargaining agreement. The requesting union shall first obtain a <i>Constancia de Representatividad</i> (proof of representation) issued by

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	<p>the <i>Centro Federal de Conciliación y Registro Laboral</i>.</p> <p>If the employer refuses to enter into a collective bargaining agreement, the workers could exercise their right to strike.</p> <ul style="list-style-type: none"> • Article 133.- Forbids employers or their representatives from: <ul style="list-style-type: none"> ○ Coercing workers to affiliate to a union or to withdraw from it; or to cast their votes in any particular manner ○ Exercising control over a union in which their workers are affiliated.
<p>2.(b) Obligation to establish and maintain:</p> <ul style="list-style-type: none"> • An independent entity for: conciliation and registration of unions and collective bargaining agreements. This independent entity shall have the authority to issue appropriate sanctions against those who violate its orders. • Labor Courts for the adjudication of labor disputes. 	<p><u>Establishment of an independent entity:</u></p> <ul style="list-style-type: none"> • Article 590-A provides that the <i>Centro Federal de Conciliación y Registro Laboral</i> shall have, among others, the following responsibilities: <ul style="list-style-type: none"> ○ Act as a conciliatory actor in disputes regarding matters of labor federal competence. ○ Carry out the registration of all collective bargaining agreements and labor unions. • Article 590-B provides that the <i>Centro Federal de Conciliación y Registro Laboral</i> shall be established in accordance with the following guidelines: <ul style="list-style-type: none"> ○ Shall be constituted as a decentralized public entity of the Federal Government. ○ Shall have its own assets and legal entity. ○ Shall have full technical and operative autonomy. ○ Shall be governed by the principles of impartiality, objectivity, transparency and legal certainty. • Article 365.- All unions shall be registered at the <i>Centro Federal de Conciliación y Registro Laboral</i>. To this effect, this Article

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	<p>establishes the documentation each union has to submit in order to be registered.</p> <p><u>Establishment of Labor Courts for the adjudication of labor disputes:</u></p> <ul style="list-style-type: none"> • Article 604.- Provides that the labor tribunals of the Federation Judicial Power or the labor tribunals of the federative entities or of Mexico City shall be responsible for the adjudication of labor disputes among workers and employers; workers and workers; or employers and employers. <p>Any decision of the labor tribunals shall be based on the principles of legality, impartiality and transparency.</p>
<p>2.(c) Obligation to establish an effective system to verify that elections of union leaders are carried out through a personal, free, and secret vote of union members.</p>	<p>Article 371 (IX) establishes:</p> <ul style="list-style-type: none"> • That the union bylaws shall include the election process of union leaders which shall be carried out through the personal, free, and secret vote of union members. • The actual process that the union bylaws shall comply with in order to guarantee that the election of union directors and union sections are carried out through the personal, free, and secret vote of union members. • Any election process that does not comply the requirement established in this Article shall not be valid. <p>Article 371 Bis provides that the election process of union leaders shall be subjected to a verification system in order to corroborate that the election was carried out in compliance with the process established in Article 371(IX).</p> <p>This Article also establishes the actual verification process that shall</p>

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	<p>be carried out in order to corroborate compliance with Article 371 (IX)</p> <p>In order to carry out this verification process, the unions may request the aid of the <i>Centro Federal de Conciliación y Registro Laboral</i> or of the <i>Inspección Federal del Trabajo de la Secretaría del Trabajo y Previsión Social</i> so that they certify compliance with the election process established under Article 371 (IX).</p>
<p>2.(d) Obligation to provide in Mexico’s labor laws that union representation challenges are carried out by labor courts through a secret ballot vote and are not subject to delays due to procedural challenges or objections.</p>	<ul style="list-style-type: none"> • Article 897.- The resolution of any collective labor disputes referred to in Articles 389 (loss of the titularity of a collective bargaining agreement); 418 (loss of the administration of a “<i>contrato-ley</i>”); 424.IV (omissions or reviews of the provisions of a labor regulations); 427.I, II and V (temporary suspension of labor relationships); or 439 (reduction of personnel as a result of the introduction of new machinery or productive processes); as well as any dispute regarding a violation of the collective bargaining fundamental rights; or that challenge the election process of union leaders or union sanctions that limit the right to vote and being voted, shall be resolved through the <i>Procedimiento Especial Colectivo</i> established under Articles 897 A through 897 G of this Law <p>This Procedimiento Especial establishes secret ballot requirements.</p>
<p>2.(e) Adopt legislation requiring:</p> <ul style="list-style-type: none"> • verification by the independent entity that collective bargaining agreements meet legal requirements related to worker support in order for them to be registered and take legal effect; and • for the registration of an initial collective bargaining agreement, majority support, through exercise of a personal, free, and secret vote of workers covered by the agreement and effective verification by the independent entity, through, as justified 	<ul style="list-style-type: none"> ▪ Article 390 Bis. – Before requesting the celebration of an initial collective bargaining agreement, the union must obtain from the <i>Centro Federal de Conciliación y Registro Laboral</i> a <i>Constancia de Representatividad</i> (proof of representation) in order to guarantee that the principles of representation in unions and of certainty in the signature, registration and deposit of collective bargaining agreements are being met.

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<p>under the circumstances, documentary evidence (physical or electronic), direct consultations with workers, or on-site inspections that:</p> <ul style="list-style-type: none"> ○ the worksite is operational, ○ a copy of the collective bargaining agreement was made readily accessible to individual workers prior to the vote, and ○ a majority of workers covered by the agreement demonstrated support for the agreement through a personal, free, and secret vote. 	<p>The following procedure shall apply in order to obtain the proof of representation:</p> <ul style="list-style-type: none"> ○ The request shall be accompanied by a list that demonstrates that the requesting union has the support of at least 30% of the workers covered by the collective bargaining agreement. ○ Three days after the delivery of the request, the <i>Centro Federal de Conciliación y Registro Laboral</i> shall publish in its website the request for the proof of representation and shall request the employer to place it in the worksite. ○ The <i>Centro Federal de Conciliación y Registro Laboral</i> shall decide on the proof of representation: <ul style="list-style-type: none"> ▪ If only one union has requested the right to negotiate, the Centro shall grant the request if it has proved that it has the support of at least 30% of workers. ▪ If more than one union has requested the proof of representation in order to negotiate the collective bargaining agreement, the Centro shall ensure that each has at least 30 % of the worker's support. <ul style="list-style-type: none"> ○ In this case the Centro shall prepare a voting process that guarantees the participation of all workers through the exercise of a personal, free, and secret vote. ▪ Once the voting process is concluded and the voting act has been issued, the Centro shall issue the proof of representation to the union that has more workers. ○ In accordance with Article 388 of this law, the right to negotiate the collective bargaining agreement belongs to the union that received more votes of workers. <ul style="list-style-type: none"> • Article 390 ter.- Provides that in order to be able to register an initial collective bargaining agreement or any review of a collective bargaining agreement, the <i>Centro Federal de Conciliación y Registro Laboral</i> shall verify that the agreement has been approved by the majority of the workers covered by it, through the exercise of a personal, free and secret vote.

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	<p>This Article establishes the consultation process the <i>Centro</i> has to follow in order to verify the workers' approval of the agreement:</p> <ul style="list-style-type: none"> ○ The Union shall make available to all workers a printed or electronic copy of the initial collective bargaining agreement or of any review that will be subjected to consultation. ○ The processing vote shall take place on a date established in the notification. ○ The employer shall not intervene during the consultation process. ○ The results of the vote shall be published by the union leaders 2 days after the voting process took place. ○ The union shall notify the <i>Centro</i> the results within the next 3 days after the voting process was held so that the <i>Centro</i> publishes such results in its website. ○ In a scenario in which inconsistencies arise with regard to, the voting process, the <i>Centro</i> shall declare the consultation void and shall order a new consultation immediately.
<p>2.(f) Obligation to adopt legislation requiring that in future revisions to address salary and work conditions, all existing collective bargaining agreements shall include a requirement for majority support, through the exercise of a personal, free, and secret vote of the workers covered by those collective bargaining agreements.</p> <p>All existing collective bargaining agreements shall be revised at least once during the four years after the legislation goes into effect.</p> <p>Revisions must be deposited with the independent entity. In order to deposit the future revisions, the independent entity shall effectively verify through, as justified under the circumstances, documentary evidence (physical or electronic), direct</p>	<p>Article 400 Bis.- Every 2 years during the collective bargaining agreement review, the review of the agreement shall be subjected to the approval of the majority of workers covered by it, through the exercise of a personal, free, and secret vote.</p> <p>The consultation process established under Article 390 Ter (above) shall apply to verify the approval of the majority of workers.</p> <p>All agreement reviews shall be deposited at the <i>Centro Federal de Conciliación y Registro Laboral</i> who shall verify that the workers covered by the revised agreement have knowledge of its content.</p> <p>Eleventh Transitional Provision. - All existing collective bargaining agreements shall be reviewed at least once during a four- year period,</p>

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<p>consultation with workers, or on-site inspections that:</p> <ul style="list-style-type: none"> • a copy of the revised collective bargaining agreement was made readily accessible to the workers covered by the collective bargaining agreement prior to the vote, and • a majority of workers covered by the revised agreement demonstrated support for that agreement through a personal, free, and secret vote. 	<p>starting after the date of entry into force of the amendments to the <i>Ley Federal del Trabajo</i>.</p> <p>The reviews shall be deposited at the <i>Centro Federal de Conciliación y Registro Laboral</i>. The <i>Centro</i> shall verify that:</p> <ul style="list-style-type: none"> ○ The review has the approval of the majority of workers covered by it, through the exercise of a personal, free, and secret vote. The consultation process established under Article 390 Ter (above) shall apply to verify the approval of the majority of workers. ○ The workers covered by the revised agreement have knowledge of its content and that a copy of the agreement was delivered to them. <p>If the review of an agreement has not the support of the majority of workers covered by it, or a consultation process to verify the support has not been carried out, the collective bargaining agreement shall be terminated, preserving the workers' benefits that offer a better protection than that granted by the law.</p>
<p>2(g)... Obligation to provide in the Mexican labor laws:</p> <ul style="list-style-type: none"> • That each collective bargaining agreement negotiated by a union and a union's governing documents are made available in a readily accessible form to all workers covered by the collective bargaining agreement. • For the establishment of a centralized website that provides public access to all collective bargaining agreements in force and that is operated by an independent entity that is in charge of the registration of collective bargaining agreements. 	<ul style="list-style-type: none"> • Article 365 Bis.- The <i>Centro Federal de Conciliación y Registro Laboral</i> shall make publicly available for consultation of any duly accredited person the information regarding union registry's. The <i>Centro</i> shall also issue any requested copy of the documents in its files. <p>The web site of the <i>Centro</i> shall contain all documents related to union registry's, including, union's bylaws.</p> <ul style="list-style-type: none"> • Article 391 Bis.- The registration authority shall make publicly available to any person the information regarding the collective bargaining agreements that it has under deposit. It shall issue any requested copy of such documents.

<p>Annex 23-A Worker Representation in Collective Bargaining in Mexico</p>	<p>Initiative to Amend the Ley Federal del Trabajo</p>
	<p>The text of the collective bargaining agreements shall be made publicly available in the registration authority's web site.</p>