

## Provisions for the Registration of Specialized Services or Work Providers

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As part of the recent reform on labor subcontracting on May 24, 2021, the agreement (“Agreement”) by which the general provisions for the registration of individuals or legal entities that provide specialized services or perform specialized work referred to in Article 15 of the Federal Labor Law (“LFT”) was published in the *Official Gazette of the Federation*. Among the most relevant changes of this new labor reform is, on one hand, (i) the prohibition of outsourcing or labor subcontracting and, on the other hand, (ii) the authorization to subcontract specialized services or perform specialized work that are not part of the corporate purpose or the preponderant economic activity of the beneficiary thereof, by the contractor, which must be registered in the public registry (“Registry”) established for such purpose by the LFT.

Among the most relevant aspects of this Agreement are the following:

- (i) The definition of *specialized services* or works, as “those that gather distinctive elements or factors of the activity performed by the contractor, which are supported, among others, in the training, certifications, permits or licenses that regulate the activity, equipment, technology, assets, machinery, risk level, average salary range and experience, which provide added value to the beneficiary.”
- (ii) The definition of *beneficiary*, as “that individual or legal entity that receives the specialized services or the execution of specialized works from the contractor, as long as they are not part of its corporate purpose or its preponderant economic activity.”
- (iii) Obligation to register in the Public Registry if specialized services are rendered or specialized work is executed, including the case where complementary or shared services or work are rendered within the same business group and, in both cases, only if workers are placed at the disposal of a third party beneficiary. The registration must be obtained within 90 calendar days from May 24, 2021.
- (iv) In order to register in the Public Registry, a valid electronic signature must be provided and the user must enter the [platform](#) where all the information and documentation requested therein will be provided.
- (v) Within the specialized service, the contractor shall: (i) precisely state the service it wishes to render or the type of work it wishes to execute, and must, in turn, accredit under oath, for each of such activities, its specialized nature, describing the elements or factors that support such exceptional nature. For this purpose, the specialized nature must be accredited by providing all the information and documentation related to training, certifications, permits or licenses that regulate the activity, such as equipment, technology, assets, machinery, risk level, average salary range, experience, among others, and (ii) identify the folio corresponding to the “Specialized Economic Activity” according to the “Catalog of activities for the classification of companies in the labor risk insurance” of the Mexican Social Security

Institute contained in the Regulations of the Social Security Law on Matters of Affiliation, Classification of Companies, Collection and Taxation.

(vi) The registration number obtained in the Public Registry must be included in each and every contract entered into and, in addition, the folios corresponding to the activities of the corporate purpose registered in the Public Registry and to the Specialized Economic Activity mentioned above must also be included in such contracts.

(vii) As of the date of the application for registration, the company must be up to date with all tax and security obligations with the Tax Administration Service, the Mexican Social Security Institute and the National Workers' Housing Fund Institute.

(viii) Once registered in the platform, the Secretariat of Labor and Social Security ("STPS") must issue a statement within 20 business days after receiving the information. If it does not do so, the interested party may request the STPS to issue the corresponding notice of registration within the following three business days. Once this term has elapsed without the notice of registration having been issued, the same will be deemed to have been accepted.

(ix) Registration may be denied, mainly (i) for not proving compliance with tax and social security obligations, (ii) because the documents uploaded to the platform are not legible, (iii) because the activities do not correspond to those established in the corporate purpose of the individual or legal entity, or (iv) because the information provided on the platform is not truthful.

Similarly, the registration may be cancelled at any time, if (i) services are rendered that are not registered or that form part of the corporate purpose or main activity of the contractor, (ii) the existence of debts for credits derived from tax or social security obligations is evidenced, (iii) the registration requirements are no longer met, (iv) the Federal Labor Law on subcontracting is violated, (v) attention is denied to any requirement of the STPS or (vi) the registration renewal is not carried out in a timely manner.

In the event that any of the aforementioned reasons arise, the STPS will notify the individual or legal entity so that within a period of five business days it may state what it deems appropriate, and the corresponding decision will be issued.

(x) The registration shall be valid for three years and must be renewed within three months prior to the date on which its validity expires.

(xi) Those who obtain the registration shall be obliged to fully identify their workers by means of the image, name, badge or identity code that links such workers with the company rendering the specialized service or executing the specialized work during the performance of their work in the facilities of the company that hires the services.

(xii) In accordance with the criteria of the STPS, individuals who provide services or specialized works must obtain their registration in the Public Registry only in the event that they provide workers to a third party (beneficiary) for the performance and/or execution of the contracted services or specialized work. The same criterion prevails in the execution of contracts of a commercial nature in which the parties do not place workers at the disposal of a third party in the terms referred to above, where there is no obligation to register in the Registry.

Emphasis is made on the need to review the contracts in force or those yet to be signed, which are within the scope of this labor reform, including the registration in the Public Registry. In this regard, it will be important to analyze the structure and content of such contracts in order to ensure that both the new legal requirements and the limits of liability between the parties are perfectly delimited.

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If you have any questions, please contact one of the lawyers listed below.