



Arts & Cultural

affairs-related trusts and mandates

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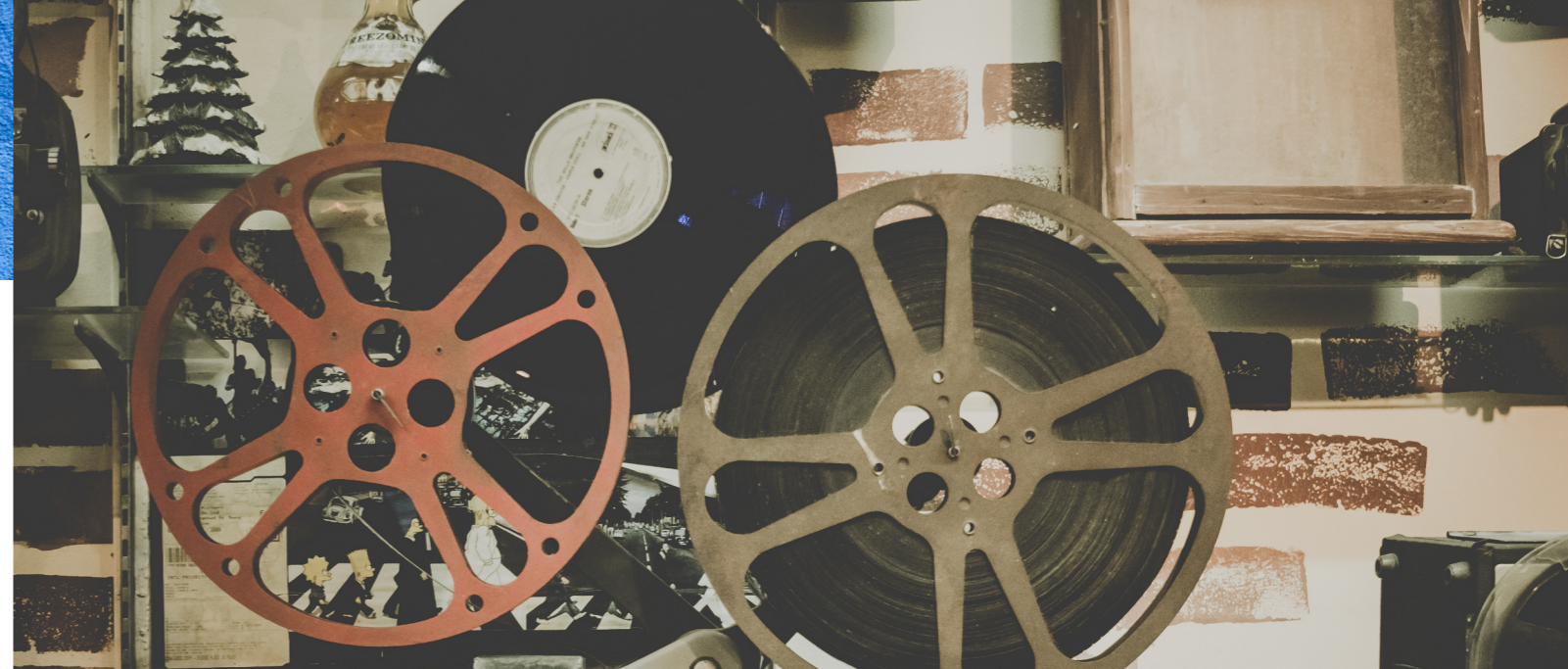
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I. History and future of the National Fund for Culture and Arts (“FONCA”) and the Fund for Quality Film Production (“FOPROCINE”).

On April 2nd, 2020, the federal government issued a Decree ordering the extinction or termination of all public trusts, mandates or similar legal figures related to public funding. However, section 5 of the Decree provided that are exempted from extinction, trusts and mandates created by the law or legislative decree; those which extinction or termination required constitutional or legal amendments; legal instruments that serve as public debt mechanisms; and trusts or funds which purpose is attending health emergencies or fulfilling labor or pension obligations.

Arts and cultural affairs related trusts and funds were not included in said exemptions. As a result, it came to light the extinction of a number of trusts and mandates related to culture. Artists, musicians, writers, painters, producers, and creators in general, were suddenly left in a state of emergency. There was a widespread discontent with the

federal government's sudden decision, and rightly so, that seemed arbitrary and generalized, since not all of the trusts related to arts and cultural affairs were made by Congress. Lobbying efforts by artists were successful. On April 17th, the Ministry of Culture issued a communication stating that as a result of a request, FONCA would be incorporated to the organic structure of the Ministry of Culture as a new branch, and FOPROCINE would be merged with the Fund for Investment and Fostering of Film (“FIDECINE”).

Nonetheless, new issues arose regarding the communication. Some of the questions are now: How will FONCA be integrated into the Secretary of Culture? What will involve the merger of FOPROCINE and FIDECINE? What will happen to the other arts and cultural affairs trusts and mandates?

On March 1st, 1989, the federal government, signed a Mandate Agreement with Banco Nacional de México. The purpose of the Mandate was to create a fund that promoted the granting of financial incentives or support to writers, musicians, interpreters and creators, in general, as well as the preservation of the cultural heritage of the nation. This fund was called FONCA.

In the course of its existence, the Mandate Agreement has been modified and updated three times. Firstly, FONCA became the financial mechanism of the National Council for Culture and the Arts and later of the Ministry of Culture. It was in charge of controlling funds of the federal and local governments, by getting donations from individuals and civil societies, and by investing them in cultural projects.

Considering the benefits FONCA has provided, the Ministry of Culture has requested an exemption to avoid that that it disappears.

However, it does not look advisable from an administrative standpoint that FONCA becomes one of the branches of the Ministry of Culture. There is fear that that procedures would be slower and more rigid and complex.

Until then FONCA will continue to operate as originally intended until the changes are implemented. For the purpose of incorporation, the Mexican Congress is currently analyzing two bills in connection with culture and copyright, for amending the General Law of Culture and Cultural Rights.

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II. Amendment proposals to the General Law of Culture and Cultural Rights

a) The First Bill.

The First Bill was presented on April 21st, 2020, before the Congress by members of the Commission of Culture and Cinematography and in particular by Sergio Mayer Breton, President of that Commission.

The purpose of the First Bill is to add a new title to the General Law of Culture and Cultural Rights entitled "Of the Financing Mechanisms in Cultural Matters". In virtue of the changes that the bill proposes, the existence of FONCA would be confirmed or "consolidated" and "used".

The most important part of the First Bill is that the Ministry of Culture will have the facility to constitute public trusts related to arts and cultural affairs, and promote the growth of the cultural and artistic sector in collaboration with the Ministry of Finance as well as "consolidate" FONCA, however there are some deficiencies in the form the First Bill is proposed.

The public policy programs, actions and mechanisms mentioned in are not clear as to who they will be directed at, how they will be implemented, or the specific focus of such mechanisms. The wording is extremely ambiguous and does not resolve these matters. Also, it fails to explain how the concurrence of the social and private sectors will occur.

Regarding section and FONCA's "consolidation", the First Bill is in harmony with the Decree, as trusts, funds and mandate constituted by mandate of law are exempt from its extinction. However, there is no mention of the creation of new funds. On the surface, it would seem that being created by mandate of law means that FONCA will not be extinguished except for new amendments to the General Law of Culture and Cultural Rights and will remain in full force for the foreseeable future.

In general, the First Bill is a step forward to grant certainty and organic structure to an important fund in Mexico and ensure artists and authors that they will not become affected arbitrarily but, it needs better resolutions and specific language to correctly apply its provisions, as well amendments to the Regulations of the General Law of Culture and Cultural Rights, and to other laws such as the Value-Added Tax Law, and the Income Tax Law.

With the way the bill is proposed, it is likely that the legislative process and the bureaucracy of the Ministry of Culture may turn FONCA into an inoperable financial mechanism that only delays the granting of



financial incentives, supports and funds. FONCA will continue to be a Fund operated by the federal government, except that it will not be administered directly by the Ministry of Culture and not internally and independently as before.

b) Second Bill.

The Second Bill was submitted by the political party called "Encuentro Social". Like the First Bill, the Second Bill proposes the addition of a sixth title to the General Law on Culture and Cultural Rights. However, the purpose of the Second Bill is to create a new public trust to manage resources, under the name "National Fund for the Patronage of Culture and Arts" ("FONAMECA").

The FONAMECA would be integrated by contributions of public and private sources.

If FONCA was suppressed –just like so many other trusts– because the federal government considered that they only served as a mechanism to foment corruption and that they were obsolete, then the Second Bill must follow the same legislative line and must be substantiated on either the General Law of Culture and Cultural Rights or its Regulation.

There are other deficiencies in the Second Bill that makes it unviable. As example of this, it is not completely clear on the purpose of donations by private entities nor in its capacity as a tax that can be deducted. Similarly, it does not state how the system will manage the resources of both private and public initiatives. This leads to consider if once the funds from the private initiative are received, they will all be managed by the trust or if there will be committee members from the private sector, whether national or foreign.

Taking into consideration all the deficiencies mentioned, the Second Bill is the least ideal solution to the problems caused by the Decree.

Both initiatives must continue the usual legislative process. The First Bill gives a transitory period of 60 days to "consolidate" FONCA, whereas the Second Bill, a term of 90 days, to execute the trust agreement in to create FONAMECA. In the end, none of the terms established in their respective transitional provisions would be enough to fully resolve the existence of these Funds.



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III. The Fund for Quality Film Production (“FOPROCINE”)

The Mexican Cinematography Institute (“IMCINE”) created FOPROCINE on December 1997, and has been in charge of managing it, in accordance with its bylaw.

After the decree, the Ministry of Culture submitted an exemption request. As a result of that request, FOPROCINE will be merged with the so-called Film Investment and Stimulus Fund (“FIDECINE”). Accordingly, it will become a single system pretending to support the creation of quality films, operating with the resources of both funds.

FIDECINE was not extinguished since the Federal Law of Cinematography created it.

This is problematic for several reasons. Firstly, there are key differences related to the subject-matter, what could be financed, and the way in which the two funds operate.

FOPROCINE would be extinguished as a result of the Decree, being one of the most important funds for the film industry, having assisted the production of more than 400 audiovisual works from 1998 to 2019.¹

FOPROCINE was a fund that financed production and postproduction of fiction, documentary and animation films (of more than 60 minutes) with a limit of 10,000.000 MXN (approximately \$500,000 USD) and series with a limit of \$15,000.000.00 MXN (approximately \$750,000 USD) in the same genres.

The aforementioned amounts could not comprehend more than 80% of the production budget. Also, FOPROCINE was available to productions led by foreign directors as long as they were bound to a Mexican production company.

Whereas, FIDECINE may fund up to 49% of the production budget up to an amount of \$8,000,000 MXN (approximately \$400,000 USD), of films (of more than 75 minutes) of fiction and animation (i.e. no documentaries may be funded with this trust), and is solely available for Mexican productions and Mexican directors.

It is unclear how FIDECINE will operate once the resources of FOPROCINE and its own are merged. The foregoing if a new trust will be created or if FIDECINE will have two different mechanisms in other to grant the funds, depending on the needs of the production. The same regarding the amounts that will be granted or the audiovisual works that will be supported. During this merge procedure, the supports committed by FONCA and the open calls will be realized through FIDECINE.

The final problem is that, neither the Ministry of Culture nor any other entity of the federal government have made available a timeline available nor the clear procedure for the merger procedure of FOPROCINE and FIDECINE.

¹ <http://www.imcine.gob.mx/wp-content/uploads/2019/08/PEL%C3%8DCULAS-FOPRO-APOYADAS-1998-2019.pdf>

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IV. Fate of other arts and cultural affairs-related Trusts and Mandates



The Ministry of Culture considered that the Antiguo Colegio de San Ildefonso's mandate has unique and successful model, which is comprised by a Mandate formed by the National Autonomous University of Mexico, the Ministry of Culture of Mexico City and the Government of Mexico City. Therefore, the model has demonstrated its effectiveness in the administration of this building and successfully created an emblematic space for Mexican culture and arts. For this reason, the authority added that it will continue to operate as it has, without any modifications.

As for the Trust for the Promotion and Conservation of the Anthropological, Archaeological and Historical Cultural Heritage of Mexico (FIDEINAH), it is reported that it will be extinguished once the resources committed so far are exhausted.

Likewise, the Ministry of Finance was informed by the Ministry of Culture that they will timely comply with the Decree, initiating the extinction

of the following trusts:

- i. Trust for the Adaptation of the Diego Rivera and Frida Kahlo Museums
- ii. Trust to Support the Construction of the National Centre for the Arts (FICENART). (iii) Trust for the Conservation of the Casa del Risco and the Isidro Fabela Art Gallery. (iv) Trust for the Irrevocable Administration of the Regional Museum of Guadalupe, iii. Zacatecas.
- iv. (v) Irrevocable Private Management Trust of Santo Domingo de Guzmán, Chiapas. (vi) Irrevocable Trust for the Administration of Central Santo Domingo, Oaxaca.

As far as the extinction of the above-mentioned trusts is concerned, there is no major national impact on the arts, audiovisual and cultural affairs sector resulting from said extinction or termination.

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IV. Conclusions

The original idea of the Decree was to eliminate certain mechanisms that promoted corruption and unneeded expense in certain sectors that the federal government considered non-essential, however there was a fatal flaw in said considerations as the method of elimination was a generalized and arbitrary Decree that did not obey the reality of trusts or mandates that were not only useful but necessary for the development and growth of important sectors, such as the arts, audiovisual industry, and cultural affairs that represent an important part of the gross domestic product.

In consequence, some measures had to be taken in order to continue with the most important funds in that regard: FONCA and FOPROCINE.

The First Bill essentially proposes maintenance of the status quo, with the only difference of the rigidity of the law and the bureaucratic process of the Ministry of Culture to function. The Second Bill proposes a new trust without the clarity and transparency that existed in the original FONCA, at least for the time being. It offers essentially no improvement, nor do we consider that its mechanisms are better defined.

Finally, the merger of FOPROCINE and FIDECINE seems like a futile attempt to make amends for a blunder. It does not take into consideration that these funds have similar backgrounds but different objects. Ideally, FOPROCINE should be created by law, and for this purpose it would be necessary to reform the Federal Law of Cinematography, which recognizes not only its importance but also its essential differences with FIDECINE, so that both funds may continue to grant the amounts and incentives to their specialized genres.

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