

A horizontal banner image with a grid overlay. It features a scale of justice on the left, a computer keyboard in the center, and a gavel on the right. The text "JONES DAY COMMENTARY" is overlaid in white, with "COMMENTARY" in a larger font.

JONES DAY COMMENTARY

MEXICAN GENERAL LAW OF CLIMATE CHANGE

On June 6, 2012, the General Law of Climate Change (the “CCL”) (*Ley General de Cambio Climático*) was published in Mexico’s Official Gazette of the Federation. This law will enter into force on August 4, 2012.

The CCL is based on the premise that Mexico intends to (i) adopt renewable energy resources, (ii) become more sustainable, and (iii) control its carbon emissions footprint without halting the country’s economic development. These measures will permit Mexico to take its place among environmental world leaders such as the United Kingdom and the European Union.

Despite Mexico’s efforts, it is still a significant emitter of greenhouse gases. Mexico’s economic growth is expected to be sustained, which causes concern among the public and private sectors as well as among environmental activists and NGOs because this sustained growth, coupled with the increasing demands of a growing national and global population, may require investments that are not only efficient but also environmentally sustainable.

PURPOSE OF THE CCL

The CCL purports to guarantee the right of access to a healthy environment by regulating the emissions of greenhouse gases and greenhouse compounds, as well as regulating the mitigation of and adaptation to climate change, in order to reduce the vulnerability of people and ecosystems in the country against the effects of climate change.

The new legislation seeks to reduce greenhouse gas emissions by 30 percent in 2020 and by 50 percent in 2050. It also sets a goal of at least 35 percent of Mexico’s electricity coming from clean sources by 2024 and reducing dirty carbon emissions by 30 percent by 2020. In addition, the CCL establishes incentives developed by the Ministries of Energy and Finances that will help to promote alternative energy sources, and it provides for the creation of the National Institute of Ecology and Climate Change (the “NIECC”) (*Instituto Nacional de Ecología y Cambio Climático*) to assist the current and future administrations in the determination of environmental public policies related to climate change and sustainable energy sources.

NATIONAL INSTITUTE OF ECOLOGY AND CLIMATE CHANGE

The CCL creates the NIECC as a public decentralized federal agency and a subdivision of the Ministry of Environment and Natural Resources (the “Ministry”). The NIECC will substitute the National Institute of Ecology (*Instituto Nacional de Ecología*) (the “NIE”), and will be in charge of carrying out the functions of the NIE in addition to providing research, technical, and scientific support related to climate change. The NIECC will also have the duty to incorporate the National Registry of Emissions.

NATIONAL CLIMATE CHANGE POLICY

The CCL provides a National Climate Change Policy that will be governed by the principles of sustainability in the exploitation or use of ecosystems, responsibility of the state and society in general, caution when there are threats of serious or irreversible damage, citizen participation, environmental responsibility, and use of economic instruments for mitigation and adaptation, among others.

This policy should establish economic, political, and regulatory instruments, plans, programs, and actions, for the gradual reduction of specific emissions per sectors and activities. It should take into consideration the Mexican government’s commitments to reduce emissions under international treaties regarding climate change.

The National Climate Change Policy has the following planning instruments: (i) the National Strategy and (ii) National and Federal Entities Programs.

The National Strategy. The Ministry is required to prepare the National Strategy for Climate Change with the participation of NIECC, incorporating the opinion of the Council on Climate Change (“Council”), and to obtain approval from the Inter-Ministry Commission for Climate Change (the “Commission”). Thereafter, the National Strategy will be published in the Official Gazette of the Federation. The social and private sectors should be consulted in the development

of the National Strategy, which will be reviewed at least every 10 years with respect to mitigation and every six years with respect to adaptation.

Federal Entities Programs. Programs will be prepared by the Ministry with the participation and approval of the Commission. This program will establish the objectives, strategies, actions, and goals to address climate change by identifying priorities for adaptation and mitigation, as well as allocation of responsibilities, execution times, actions coordination, and cost estimates, according to the National Development Plan and National Strategy.

National Climate Change System. The federal, state, and local governments, and their agencies and entities, will establish the basis for coordinating the integration and operation of the National Climate Change System, which will aim to serve as a permanent mechanism for concurrency, communication, collaboration, coordination, promotion, and consultation on National Climate Change Policy. This system will consist of the Commission, Council, the NIECC, and a representative from each of the national associations, local authorities, and representatives of Congress.

National Registry of Emissions. The Ministry will put together a National Registry of Emissions for stationary and mobile sources of emissions subject to reporting based on the items listed in Article 87 of the Law. In this sense, the individuals and companies responsible for the sources subject to reporting are required to provide information, data, and all the necessary documents evidencing their direct and indirect emissions for integration into the registry.

In addition, individuals or companies that carry out projects or activities that result in mitigation or reduction of emissions may enter that information in the National Registry of Emissions, according to the regulations to be issued for that purpose.

Climate Change Fund and Economic Instruments. The CCL creates the Climate Change Fund (*Fondo para el Cambio Climático*) (the “CCF”), substituting for the current Mexican Carbon Fund (*Fondo Mexicano de Carbono*), in order to

capture attention and raise public, private, national, and international funds to support the implementation of actions to address climate change through a public trust created by the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*). Some of the purposes of the Fund for Climate Change are:

- Projects related to energy efficiency, development of renewable energies, and second-generation biofuels;
- Elimination and use of fugitive emissions of methane and gas associated with the exploitation of carbon mineral deposits;
- The development of sustainable transportation systems; and,
- The purchase of certified emission reduction bonds issued in connection with projects registered at the National Registry of Emissions or any other project approved by international agreements ratified by the Mexican government.

In order to reach the emission reduction target, the CCL mandates that the federal and local governments of Mexico and the Federal District implement financial, tax, and market instruments to provide incentives for private entities and individuals.

With regard to tax instruments, the CCL considers the granting of incentives for the research and implementation of:

- Mechanisms, equipment, and technology to avoid, control, or reduce emissions;
- Energy-efficiency systems, development of renewable energies, and low-carbon emissions technologies; and,
- Activities regarding adaptation to climate change and mitigation of emissions.

Regarding market instruments, the Commission has powers to enact a voluntary “emissions trading” system where “carbon bonds” and other financial instruments may be traded in Mexico and internationally.

SURVEILLANCE AND COMPLIANCE

In the event that the individuals or companies responsible for the emission sources subject to reporting fail to provide the information, data, or documents required by the Ministry in the specified period, the Federal Environmental Protection Agency (*Procuraduría Federal de Protección al Ambiente*) (the “PROFEPA”) may impose a fine of 500 to 3,000 days of general minimum wage in Mexico City,¹ (approximately US\$2,227 to US\$13,356)² without prejudice of the need for immediate compliance with this obligation.

In the event that parties give false or inaccurate information or fail to meet deadlines and terms for its delivery, the PROFEPA will apply a fine of between 3,000 to 10,000 days of general minimum wage in Mexico City (approximately US\$13,356 to US\$44,521).³ The fine shall be without prejudice of any further civil or criminal liabilities that may arise therefrom.

The PROFEPA is obliged to make the acts described above known to the competent authorities. In the event of recidivism, the amount of the fine may be up to three times the original amount.

CONCLUSION

With the CCL, Mexico’s renewable energy future is closer at hand than ever before. As the CCL enters in force, the Mexican government will have additional authority to create incentives for future investment in the country’s renewable energy sector that will push Mexico toward a “green” future, in both economic and environmental terms.

From the energy industry’s perspective, this is translated into, on the one hand, a more diversified investment portfolio in which “green” companies or low-emission businesses are presented as an investment alternative vis-à-vis the traditional investments in the extractive industry (where permissible in Mexico). On the other hand, this may result in obligations concerning the registration of current emissions that may prove cumbersome.

1 The current minimum wage of Mexico City is 62.33 pesos.

2 Taking into consideration a 14.00 pesos per U.S. dollar exchange rate.

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