



JONES DAY  
**COMMENTARY**

## MEXICAN GOVERNMENT LOOKING TO OPEN MEXICO'S OIL, GAS, AND ELECTRICITY INDUSTRIES TO PRIVATE INVESTORS

On December 2, 2012, Mexican president Enrique Peña Nieto and Mexico's primary political parties entered into the "*Pacto por México*" (in English, the "Pact for Mexico"), which, among other things, called for reformation of Mexico's energy legal framework. Accordingly, on August 12, 2013, President Peña Nieto submitted to Mexico's congress a proposal to modify Articles 27 and 28 of the Mexican Constitution for the purpose of allowing private participation in Mexico's oil, gas, and electricity industries. While President Peña Nieto made it clear that his proposal does not represent a step toward the privatization of *Petróleos Mexicanos* ("Pemex") or the Federal Electricity Commission ("CFE"), it will allow private participation in the upstream, midstream, and downstream sectors of the oil and gas industry. The proposed amendments will require approval by two thirds of Mexico's congress and a majority of its states' legislatures.

The proposal addresses the oil and gas sector and electric sector. With respect to the oil and gas sector, the proposal sets forth two main objectives: (i) to allow private entities to enter into contracts for the exploration and extraction of hydrocarbons, and (ii) to allow (under a federal permitting process) third-party investment and participation in the value-added chain of the oil and gas sectors (essentially, the mid-stream and downstream sectors of Mexico's oil and gas industry). With respect to the oil and gas sector, the primary implications include:

- Mexico will continue to own all hydrocarbons in the ground.
- Pemex will be allowed to enter into profit-sharing contracts with private parties for the exploration and extraction of hydrocarbons, with compensation based on participation in the sale of hydrocarbons or the recovery of hydrocarbons (secondary legislation will regulate these schemes).

- Through permits granted by the Mexican government, private entities will be allowed to participate in the midstream and downstream oil and gas sectors (the refining, processing, transportation, storage, and distribution of hydrocarbons).
- The now-existing restriction that prohibits private sector investment by the petrochemical industry (ethane, propane, butane, pentane, hexane, heptane, and methane from hydrocarbon, among others) will be eliminated.

With respect to the electric energy sector, the proposal sets forth four main objectives: (i) reduction of electricity costs; (ii) organization of a national electrical system based on technical and economic principles; (iii) promotion of the electric energy sector based on joint participation by CFE and the private sector in the generation and retail sale of electric power, and (iv) strengthening the state regulatory authority with respect to development of the electric energy sector and imposing on its participants interconnection obligations, tariffs, universal service, and electrification. The proposal establishes that:

- Private party participation in the generation and retail sale of electric power will be allowed. Currently, the private sector generates electric power only under self-generation structures, and CFE is the only company engaged in the generation and retail sale of electric power. With the proposed changes, this restriction is eliminated, and private entities will be allowed to generate and distribute electric power for sale at retail to the public.
- The Mexican government will maintain the exclusivity of the national electric transmission system, ensuring access for all electric power producers.

Although the proposal suggests amendments only to Articles 27 and 28 of the Mexican Constitution, these amendments represent a fundamental shift in the approach to the development and use of Mexico's abundant natural resources. If approved, investors in Mexico's hydrocarbons economy will now be able to participate in profit-sharing contracts (instead of the current risk/service contract basis) in the upstream sectors. In addition, substantial additional investment in the midstream and downstream oil and gas sectors will be encouraged, and private investment in electric power generation and distribution services to the public will finally be permitted, which is also expected to spur substantial growth. The amendments, while fundamental, will be only the first step in the process, as the specific regulatory framework for each of these changes will have to be implemented through secondary laws.

## LAWYER CONTACTS

For further information, please contact your principal Firm representative or the lawyer listed below. General email messages may be sent using our "Contact Us" form, which can be found at [www.jonesday.com](http://www.jonesday.com).

### **Alberto de la Parra**

Mexico City  
+52.55.3000.4087  
[adelaparra@jonesday.com](mailto:adelaparra@jonesday.com)

### **José A. Estandia**

Mexico City  
+52.55.3000.4081  
[jestandia@jonesday.com](mailto:jestandia@jonesday.com)

*Francisco Pams, an associate in the Mexico City Office, assisted in the preparation of this Commentary.*