



JONES DAY
COMMENTARY

THE GREEN SIDE OF THE MEXICAN ENERGY REFORM

Mexico's Energy Reform establishes relevant regulatory and administrative changes with regard to environmental protection that may have a significant impact on the operations of private parties participating in the energy sector.

On December 20, 2013, the Mexican Executive Branch, through the Ministry of the Interior, published in the Official Gazette of the Federation the Decree (the "Decree" or the "Energy Reform") that amended and added several provisions to the Mexican Constitution on energy-related matters.

Through the amendment of articles 25, 27, and 28 of the Mexican Constitution, the Decree opens up the possibility for private parties to participate in the Mexican energy sector, specifically in activities related to: (i) the generation and commercialization of electric energy and (ii) the exploration and extraction of oil and other hydrocarbons.¹

¹ For a detailed discussion of the Energy Reform's content, please refer to two *Jones Day Commentaries*: "[Mexican Congress Approves Bill to Open Mexico's Electricity Industry to Private Investors](#)" and "[Mexican Congress Approves Bill to Open Oil and Gas Sector to Private Investment](#)."

As a result, both the Federal Electricity Commission (*Comisión Federal de Electricidad* or "CFE") and *Petróleos Mexicanos* ("PEMEX") transform from decentralized operations to productive state companies whose objective is "creating economic value and increasing the Nation's income," activities that now will have to be done in cooperation with other public and private companies.

In that respect, the Energy Reform contains significant environmental elements to be developed within the next months with potential impact for the private sector, which are generally described below.

RATIFICATION OF ENVIRONMENTAL PROTECTION THROUGH A NATIONAL POLICY OF SUSTAINABLE INDUSTRIAL DEVELOPMENT

Among the reforms to article 25 of the Constitution, the Decree obliges the public sector to support and encourage companies in the social and private sectors through the use of productive resources intended to benefit the country as a whole while protecting their conservation and the environment. In this sense, the

Decree incorporates the concept of “sustainable industrial development” as a new principle of environmental policy. This same concept of “sustainability” is already included in previous paragraphs of the same article with respect to the State’s responsibility for national development.

The abovementioned new principle of environmental policy narrows the general concept of sustainability to the industrial sector; thus, the development of environmental policy programs directed specifically to that sector most likely will result in the development of new or stricter mechanisms of control and reporting for the sector.

ADAPTATION OF THE NATIONAL LEGAL FRAMEWORK ON ENVIRONMENTAL PROTECTION

With respect to the Decree’s 17th Transitory Article and in accordance with the abovementioned section, the Mexican Congress will have until December 21 to amend the national legal framework on environmental protection in the processes related to the Energy Reform.

Specifically, the Decree establishes the obligation to the Congress to incorporate better practices in areas related to:

- Efficiency in the use of energy and natural resources;
- Reduction in the generation of greenhouse gases and compounds;
- Lowering of waste generation and emissions; and
- Reduction in carbon footprint.

The final item implies a potential creation of *ex professo* laws relating to environmental protection for the electric and hydrocarbon sectors, as well as amendments to environmental laws currently in force in the country. Such laws include the General Law of Ecological Balance and Environmental Protection and the General Law for the Prevention and Comprehensive Management of Wastes, which certainly will include a new obligation scheme for the sector’s companies.

The National Program for the Sustainable Use of Energy and Creation of a Law Regarding Exploration and Exploitation of Geothermal Resources

With respect to Mexico’s transition to the use of renewable energies, the Decree reinforces this approach by imposing on the Ministry of Energy the obligation to include in the National Program for the Sustainable Use of Energy a transition strategy in order to encourage the use of cleaner technologies and fuels.

This strategy constitutes a significant addition to the lines of action of the Program, considering that prior to the Energy Reform, efforts were focused on identifying opportunities to achieve an optimal energy use resulting in savings for the country in the mid and long terms, but not specifically on the development and promotion of the use of cleaner energies.

In addition, the Decree provides for the creation of a law related to the recognition, exploration, and exploitation of geothermal resources in order to widen the range of clean energy sources. In accordance with the Decree, the Mexican Congress will have until April 20—120 calendar days from the Decree’s entering into force, for its issuance.

The creation and eventual approval of this law constitutes an opportunity for private parties to broaden their investments in clean energy sources, specifically geothermal energy, which prior to the Reform constituted one of the least exploited energy sources in the country.

CREATION OF THE NATIONAL AGENCY OF INDUSTRIAL SAFETY AND ENVIRONMENTAL PROTECTION FOR THE HYDROCARBON SECTOR

Through the Decree, the Mexican Congress is obliged to carry out the required modifications to the national legal framework in order to create the National Agency of Industrial Safety and Environmental Protection for the Hydrocarbon’s Sector (“ANSIPAH”), within the 120-day period mentioned above.

The ANSIPAH will operate as a division of the Ministry of the Environment and Natural Resources (“SEMARNAT”) and, as part of its responsibilities, will regulate and supervise the facilities and activities of the hydrocarbons sector related to industrial and operational safety and environmental protection, including activities related to the dismantling and abandonment of facilities, as well as a comprehensive control of generated wastes.

In that regard, in practical terms, the manner in which the agency will interact with existing authorities remains unknown, considering that several competent authorities currently regulate these areas: (i) SEMARNAT, through the Federal Environmental Protection Agency, oversees environmental inspection and surveillance; (ii) the Ministry of Labor and Social Welfare oversees industrial safety in general; (iii) the Ministry of Energy oversees industrial safety applicable to the energy sector in specific; and (iv) the Ministry of the Interior oversees federal civil protection. The Reform does not establish a division of responsibility or discuss how these authorities will coordinate with ANSIPAH.

In the months to come, it is inevitable that the Decree will give rise to an increase in oversight of the sector’s activities and will result in some duplication of efforts and confusion as to the division of responsibility among the different authorities involved.

LAWYER CONTACT

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