



“Energy Issues in Mexico”
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Energy Issues in Mexico

- A. Oil & Gas
- B. Natural Gas
- C. Liquefied Natural Gas
- D. Power
- E. Renewable Energies

Oil & Gas

▪ Legal Framework

- Paragraphs 4th and 6th of Art. 27 (with respect to the restrictions on the ownership of oil and hydrocarbons), the 4th Paragraph of Art. 28 (with respect to monopolistic activities of the State in this matters) and Art. 134 (with respect to government procurement principles) of the Constitutions of the United Mexican States (the “Constitution”)
- Chapter 6 and Annexes 602.3 and III of the North American Free Trade Agreement (“Nafta”)
- Implementing Law of Art. 27 of the Constitution in Petroleum Matters (*Ley Reglamentaria del Art. 27 Constitucional en Materia de Petróleo*, hereinafter, the “Implementing Law”)
- Law of Petróleos Mexicanos (*Ley de Petróleos Mexicanos*, hereinafter the “Pemex Law”)

Oil & Gas (Cont')

- Legal Framework (Cont')

- Regulations to the Implementing Law (*Reglamento de la Ley Reglamentaria del Art. 27 Constitucional en Materia de Petróleo*, hereinafter, the "RIL27")
- Regulations to the Pemex Law (*Reglamento de la Ley de Petróleos Mexicanos*, hereinafter, the "RPL")
- Guidelines from the Board of Director with respect to Productive Sustainable Activities (*Disposiciones del Consejo de Administración respecto de Actividades Sustantivas de Carácter Productivo*, the "Board Guidelines") (PENDING)
- Criteria from the Committee for Acquisitions, Leases, Works and Services (*Comité de Adquisiciones, Arrendamientos, Obras y Servicios*, hereinafter the "Acquisitions Committee") (PENDING)

Oil & Gas (Cont')

- Competent Authorities

- Ministry of Energy (*Secretaría de Energía*)
- Ministry of Public Affairs (*Secretaría de la Función Pública*)
- Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*)
- Regulatory Energy Commission (*Comisión Reguladora de Energía; "CRE"*)
- National Hydrocarbons Commission (*Comisión Nacional de Hidrocarburos*)

Oil & Gas (Cont')

- **Public Entities**

- **Petróleos Mexicanos and its subsidiaries (jointly, "Pemex") are the following:**

- *Pemex-Exploración y Producción*: Exploration and exploitation of oil and natural gas; its transportation storage facilities and marketing;
 - *Pemex-Refinería*: Industrial refinery processes; elaboration of petroleum products and oil related products suitable to be used as basic industrial raw material; storage, transportation, distribution and marketing of products and its related products.
 - *Pemex-Gas y Petroquímica Básica*: Natural Gas processing, liquefied natural gas and artificial gas; storage, transportation, distribution and marketing of the same as well as those products related to those suitable to be used as basic industrial raw material, and
 - *Pemex-Petroquímica*: Petrochemical industrial processes in regard to products not considered part of the basic petrochemical industry as well as their storage, distribution and marketing.

Oil & Gas (cont')

- Constitutional Restrictions (Sixth Paragraph of Art. 27 of the Constitution)
 - Direct Domain. It corresponds to the Nation the direct control of the natural resources in the Mexican territory, including oil and natural gas.
 - Non-transferable and Does not Expire. The Nation's control is non-transferable and does not expire, which means that will not be subject to statutes of limitations (*imprescriptible*).
 - Exploitation. Exploitation of oil and natural gas is reserved to the Nation and shall be determined through the Petroleum Laws.
 - No concessions or contracts. There has been an wide and ample debate with respect to the 'contracts' certain scholars consider that it should be understood as to (i) refer to contracts which may grant rights to third parties that may affect the the rights of the Nation referred to above; (ii) contracts which grant rights to third parties similar to concessions, and/or (iii) profit sharing or risk exploration and production contracts.

Oil & Gas (cont')

- Legal Restrictions

- The following activities are restricted:

- The exploration, exploitation, refining, transportation, storage, distribution and first hand sales of oil and products resulting from its refining;
 - the exploration, exploitation and first hand sales of natural gas as well as the transportation and the storage essential and necessary for the interconnection of the exploration and elaboration.
 - the elaboration, transportation, storage, distribution and first hand sales oil and natural gas related products suitable to be used as basic raw material and basic petrochemicals.

- Exploration by private investors is restricted to surface exploration according to the Implementing Law, Articles 2, 3 and 7.

- Surface exploration requires permit by Ministry of Energy granted to Pemex.

- If a private investor carries out surface exploration it must comply with the Petroleum Works Regulation (technical requirements among others) according Article 3 thereunder.

Oil & Gas (Cont')

- Legal Restrictions (Cont')
 - Rules Related to Contracts in General and specifically to the “Productive Sustainable Activities”
 - Dual Contractual Regime
 - Mexico will direct ownership of hydrocarbons;
 - Rights to oil reserves may never be transferred; *therefore*, suppliers or contractors may never register these as their own assets and Mexico will register these as part of its assets;
 - Control and management of the oil industry will be kept at all times as referred to in Article 3 of the Regulatory Law;
 - The compensation established under said contracts must always be in cash; therefore, a percentage of the production or the value of the sales of hydrocarbons or its profits or the earnings of the contracting company may never be agreed as payment for services rendered or for the works executed;
 - Preferential rights will never be granted for any type of purchase of oil or its derivatives or to influence the sale to third parties; and

Oil & Gas (Cont')

- Legal Restrictions (Cont')
 - Rules Related to Contracts in General and specifically to the “Productive Sustainable Activities” (Cont')
 - Contracts may not be executed if they include programs for shared production or partnerships in exclusive and strategic sectors that are undertaken by the Mexican State indicated by Article 3 of the Regulatory Law;
 - Payments must be set in cash and must be reasonable in terms of industry standards or uses and included in the authorized budget for PEMEX;
 - Agreements must be set by fixed programs or predetermined formulas that provide a certain price in accordance with civil legislation;
 - Agreements must be established on a quarterly basis and necessary revisions may be stipulated to incorporate any technological progress or variations to market prices of the raw materials or equipment used in the corresponding work or others that contribute to improving the efficiency of the project based on the mechanisms to adjust costs and fix the prices authorized by the Board of Directors;
 - Agreements must go into effects at the signature thereof;

Oil & Gas (Cont')

- Legal Restrictions (Cont')
 - Rules Related to Contracts in General and specifically to the “Productive Sustainable Activities” (Cont')
 - Penalties must be included in respect of the negative impact caused by the activities of the contractor regarding environmental sustainability and for any beach of the opportunity indicators, time and quality.
 - Additional compensation may only be included when:
 - The contractor obtains financing for the works to be executed;
 - The contractor benefits from new technologies provided to the contractors; or
 - Other circumstances occur that are attributed to the contractor and that result in greater profits for Petróleos Mexicanos and in a better result for the works or service; however, provide that compensation may not be fixed by reference to percentages of the value of sales or of the production of hydrocarbons. Any additional compensation must be established expressly when the agreement is signed.

Natural Gas

- Legal Framework

- Paragraphs 4th and 6th of Art. 27 (with respect to the restrictions on the ownership of oil and hydrocarbons) and the 4th Paragraph of Art. 28 (with respect to monopolistic activities of the State in this matters) of the Constitutions.
- Chapter 6 and Annexes 602.3 and III of the North American Free Trade Agreement ("Nafta")
- Implementing Law
- Natural Gas Regulations (*Reglamento de Gas Natural*, hereinafter, the "Natural Gas Regulatios")
- Directives Issued by the CRE with respect to Natural Gas Prices, Accounting, Geographical Zones, First Hand Sales, Insurance, and Liquefied Natural Gas.

Natural Gas (Cont')

- Competent Authorities and Entities
 - Ministry of Energy (*Secretaría de Energía*)
 - Regulatory Energy Commission (*Comisión Reguladora de Energía*; "CRE") shall promote the development of the first hand sales of natural gas as well as its transportation and storage necessary for its exploitation, elaboration and distribution.
 - *Pemex-Exploración y Producción*, with respect to the exploration and production of natural gas.
 - *Pemex-Gas y Petroquímica Básica*, with respect to first hand sales of natural gas produced in Mexico and the ownership and operation of the National Gas Pipeline System (*Sistema Nacional de Gasoductos*).

Natural Gas (Cont')

- Restrictions
 - Exploration and production of natural gas.
 - First hand sales of natural gas produced in Mexico.
 - Transmission through the National System of Gas Pipelines.
- Activities which allow Private Investment
 - Transportation
 - Storage
 - Importation
 - Distribution
- The activities above require permit from the CRE.
- Please note that that *vertical integration* of 'transportation' and 'distribution' activities is restricted.
- LNG Activities are regulated as a Type of Natural Gas Storage; *however*, it goes beyond than that and requires further regulation

Power

▪ Legal Framework

- Paragraphs 6th of Art. 27 (with respect to the restrictions on the Public Service of Electricity) and the 4th Paragraph of Art. 28 (with respect to monopolistic activities of the State in this matters) of the Constitutions.
- Public Power Utility Law (*Ley del Servicio Público de Energía Eléctrica*, hereinafter, the "Power Law").
- Power Law Regulations (*Reglamento de la Ley del Servicio Público de Energía Eléctrica*, hereinafter, the "Power Regulations").
- Directives and Form of Contracts Issued and Approved by the CRE with respect to Interconnection, Wheeling, Transportation and Renewable Energies.

▪ Competent Authorities and Entities

- Ministry of Energy (*Secretaría de Energía*)
- CRE
- Federal Electricity Commission (Comisión Federal de Electricidad)

Power (Cont')

- Restrictions

- "*Public Power Activities*", which include every aspect of electrical power from generation, to transmission and distribution, are reserved to the Nation.
- Also, CFE is in charge of the power dispatch through the National Center of Power Control (*Centro Nacional de Control de Energía Eléctrica* or CENACE) and the power transmission through the National Power Grid.

- Private Investment

- In 1992, several reforms were implemented to the Power Law and the Power Regulation, in order to authorize private investment in services considered to be "*Non-Public Power Activities*", which includes the following:
 - Independent power production ("IPP") which power shall be sold to CFE;
 - Co-generation (Co-gen);
 - Self-supply Projects;
 - Importation and/or Exportation of power, and
 - Combination of the above.
 - All the referred schemes require a permit that has to be issued by the CRE.

Renewable Energy

▪ Legal Framework

- Law for the Promotion and Development of Bioenergies (*Ley para la Promoción y Desarrollo de Bioenergéticos*) and its Regulations
- Law for the Utilization of Sustainable Energy (*Ley para el Aprovechamiento Sustentable de Energía*) and its Regulations
- Law for the Utilization of Renewable Energies and Financing of the Energy Transition (*Ley para el Aprovechamiento de Energías Renovables y el Financiamiento de la Transición Energética*) and its Regulations
- Rules for the operation of the National Council of Energy (*Consejo Nacional de Energía*)

▪ Competent Authorities and Entities

- Ministry of Energy
- Ministry of Environment and Natural Resources (SEMARNAT)
- Ministry of Agriculture, Cattle, Rural Development, Fishing and Food (SAGARPA)
- CRE
- Bioenergies Commission (*Comisión de Bioenergéticos*)
- CFE

Renewable Energies (Cont')

- CRE Directives
 - Form of interconnection Contract for Renewable Energies
 - Form of Transmission Contract for Renewable Energies
- Challenges
 - Proper Incentives
 - Subsidies
 - Coordination of Public Entities
- Samples
 - Biofuels
 - Wind Power Projects

Thank you ! / ¡Gracias!

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