

September 24, 2020

## Energy Industry Group News Flash



### **The Mexican Federal Administration is preparing several actions to strengthen the position of the Productive State Owned Enterprises against their competitors.**

We make reference to the memorandum supposedly drafted by the Presidency of the Republic, concerning government employees and officers of the regulatory entities of the energy sector, dated July 22nd, 2020 (the "Memorandum"), through which the President communicates the agreements, actions and changes that must be adopted by the Ministry of Energy; the Energy Regulatory Commission ("ERC") and the National Hydrocarbons Commission ("NHC") in their capacity as Coordinated Regulatory Entities in Energy Matters ("Regulatory Entities"); the state-owned companies ("SOC") Petróleos Mexicanos ("PEMEX") and the Federal Electricity Commission ("FEC"); as well as the National Center of Natural Gas Control, National Center of Energy and Control and the Security, Energy and Environmental Agency.

On August 4, 2020, such Memorandum was published in diverse electronic platforms and news; nevertheless, neither the Presidency nor the aforementioned entities have assumed the authorship or existence of the document in formal inquiries made via transparency complaints.

Through such Memorandum, the President fixed a two-month term for the cited entities to issue their response about conducting his nationalist energy policy

before contemplating a possible Constitutional reform.

At the expiration of the aforementioned two-month term of the Memorandum, on September 22, 2020, a meeting between the President and the Regulatory Entities was held in the Palacio Nacional.

In such meeting, the Regulatory Entities presumably agreed to each one of the statements proposed in the Memorandum, in order to strengthen the SOC and grant them a dominant position within the energy markets.

Some of the most important statements of the Memorandum that would possibly have a greater impact for the participants are the following:

- » Cease the granting of subsidies to private companies that participate in the energy sector;
- » Modify the dispatch order of the National Electric System to privilege CFE plants over private ones (without economic merit);
- » Cease the issuance of permits or concessions to individuals in the energy sector;
- » Support PEMEX and CFE in the energy production and

distribution policy to prevent them from continuing to lose participation in the national market;

- » Do not increase the prices of fuels and electricity;
- » Seek energy self-sufficiency;
- » Not to export oil and not import gasoline and diesel;
- » Prioritize projects for profitability when building or rebuilding generation plants to supply the demand of the southeast and Baja California;
- » Boosting the generation of electrical energy from hydroelectric plants;
- » PEMEX and CFE will continue to observe the contracts granted by previous administrations, as long as they do not involve fraud;
- » CFE must apply a plan for the use and sale of gas acquired by the previous government; and
- » Not to rule out the association with private investors, for the extraction of oil as in refining, as well as in the generation of electricity as long as these are complementary actions.

The actions carried out by the Regulatory Entities and other agencies cited in this document might affect the different participants of the industry from multiple perspectives. This situation would cause the possibility of filing the legal remedies that may be convenient for the specific case, not only through the indirect amparo trial in administrative matters before the courts of the Judicial Power of the Federation, but also by means of the federal adversarial-administrative procedure before the Federal Administrative Justice Tribunal (as defined by the Second Division of the Supreme Court of Justice in August, 2020) and even through alternative dispute resolution methods.

In addition to the breach of domestic law, the aforementioned measures and actions could be in breach of international obligations by the Mexican State. Due to the foregoing, we consider that certain foreign investors would be entitled to initiate legal actions against the Mexican government under International Treaties. On the other hand, the Parties of such Treaties could denounce the breach of international obligations, and impose retaliatory measures on Mexican goods and services.

Our energy practice and litigation team advises our clients not only from a corporate and regulatory perspective but also with strategic litigation in order to implement the legal actions that help safeguard their operations and rights. We are at your service to assist you in connection with the legal alternatives that will allow you to prevent and counteract the effects of such

resolutions and any other act of authority in this matter.

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Our Energy, Natural Resources and Environmental practice leads a larger group specialized in the energy sector, comprised of a talented team of dedicated lawyers from several practice areas, that form our Energy Industry Group, which is in a singular position to offer the diverse energy industry participants an integral, profound and multidisciplinary legal analysis that considers the different relevant matters to their business, including the energy reform in Mexico, its implications and the business opportunities it represents.

The multidisciplinary advice of our Energy Industry Group includes corporate, transactional, strategic litigation, public biddings, contractual, tax, foreign trade, labor, alternative dispute resolution methods, corporate governance and regulatory compliance.

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