

# Interoceanic corridor of the Isthmus of Tehuantepec

Category: Energy,Infrastructure, PPPs and Government Procurement,Legal Alerts,Real Estate

written by Nader, Hayaux & Goebel | mayo 23, 2023

The construction of the Interoceanic Corridor of the Isthmus of Tehuantepec is among the mega-projects of the current Mexican Federal Government. This corridor will place the Isthmus in a central position in the global trade by connecting the Pacific Ocean with the Atlantic Ocean through 300 kilometers of road, while interconnecting with the Mayan Train and Ciudad Hidalgo on the border with Guatemala.

The project seeks to facilitate the transportation of goods on the continent, as well as to modernize and expand the ports of Coatzacoalcos and Salina Cruz, install optical fiber, antennas, gas pipelines and security posts of the National Guard. The Federal Government also seeks to prepare Mexico to receive the supply chains that will arrive over the next few years due to the nearshoring phenomenon.

On May 8, the Ministry of Economy announced it will publish the bidding conditions for 6 of the 10 poles that will be installed along the corridor, as well as the economic proposal and tax incentives proposed by the Ministry of Finance and Public Credit, which include (i) accelerated depreciation over the first 6 years, (ii) VAT exemption on transactions within and between the poles during the first 4 years, and (iii) 100% income tax exemption during the first 3 years, which may be extended for an additional 3 years with a tax exemption of up to 90%, depending on variables such as the increase in the number of jobs created by the project.

The poles of this first tender will include (i) Coatzacoalcos I (257 ha), Coatzacoalcos II (131 ha), Texistepec (462 ha) and San Juan Evangelista (360 ha) in Veracruz, and (ii) Salina Cruz (82 ha) and San Blas Atempa (331 ha) in Oaxaca.

On May 12, 2023, the first 6 poles were declared to meet the criteria of location, communication, connectivity, population, indigenous consultation, education, and

territory, among others, pursuant to a decree published in the Federal Official Gazette.

The Ministry of Economy highlighted the geographical advantage of the project, indicating that the south-southeast of Mexico has water availability, green energy generation sources, as well as a specialized labor force.

The Ministry of Economy announced that the bidding conditions will be published in the days to come.

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### **Boletín informativo: corredor interoceánico del Istmo de Tehuantepec**

Entre los megaproyectos del Gobierno Federal se encuentra la construcción del Corredor Interoceánico de Istmo de Tehuantepec, el cual colocará al Istmo de Tehuantepec en una posición central del comercio global conectando a través de 300 kilómetros de vía el océano Pacífico con el Atlántico, y conectándose a su vez con el Tren Maya y Ciudad Hidalgo en la frontera con Guatemala.

El proyecto busca facilitar el transporte de mercancía en el continente, así como modernizar y ampliar los puertos de Coatzacoalcos y Salina Cruz, instalar fibra óptica, antenas, gasoductos y puestos de seguridad de la Guardia Nacional. Asimismo, el Gobierno Federal busca preparar a México para recibir las cadenas de suministro que arribarán durante los próximos años a raíz del fenómeno de la relocalización (nearshoring).

El pasado 8 de mayo, la Secretaría de Economía dio a conocer las bases de la licitación para 6 de los 10 polos que se instalarán a lo largo del corredor, así como la propuesta económica y de incentivos fiscales de la Secretaría de Hacienda y Crédito Público, la cual incluye (i) depreciación acelerada en los primeros 6 años, (ii) exención del IVA en transacciones al interior de los polos y entre ellos durante los primeros 4 años, y (iii) exención al 100% del ISR durante los primeros 3 años,

prorrogable por 3 años adicionales con una reducción de hasta el 90% en función de variables como número de puestos de trabajo creados.

Los polos de esta primera licitación incluirán (i) Coatzacoalcos I (257 hectáreas), Coatzacoalcos II (131 ha), Texistepec (462 ha) y San Juan Evangelista (360 ha) en Veracruz, y (ii) Salina Cruz (82 ha) y San Blas Atempa (331 ha) en Oaxaca.

El 12 de mayo de 2023 se publicaron en el Diario Oficial de la Federación las Declaratorias de los Polos de Desarrollo para el Bienestar para los primeros 6 puntos, indicando que cumplen con los criterios de localización, comunicación y conectividad, poblacional, consulta indígena, educativo, y territorial, entre otros.

La Secretaría de Economía destacó la ventaja geográfica del proyecto, indicando que el sur-sureste de México tiene disponibilidad de agua, fuentes de generación de energía verde, así como fuerza laboral especializada.

La Secretaría de Economía dio a conocer que se publicarán las bases de licitación en los próximos días.

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# Mexico Fundraising Chapter in The Private Equity Review 2021

Category: Capital Markets, Energy, Partners, Project Finance, Publications, Telecoms  
written by Nader, Hayaux & Goebel | mayo 23, 2023

**The Law Reviews: 10th Edition - By Partners Hans P Goebel, Héctor Arangua, Adalberto Valadez and Associate Miguel A González**

## OUTLOOK

The private equity industry in Mexico has been re-energised in recent years by government reforms and policies, a stable macroeconomic situation, stable population growth rate, an increase in real income and an active entrepreneurial ecosystem.

Mexico has successfully completed USMCA (which superseded NAFTA) negotiations with the United States and Canada and has gone through a smooth, peaceful and democratic power transition following the presidential election that took place in July 2018, providing

certainty to investors. However, Mexico's intention of being prepared for any scenario is clear from its aim to increase trade with Argentina and the Pacific Alliance (Colombia, Peru and Chile), as well as with the European Union and Asian countries, and from the government's continued efforts over the past few years in the infrastructure and energy sectors.

While the forecasts are moderate, we expect contract and investment opportunities to be abundant as government policies support a shift towards a larger role for a combined private and public investment in the Mexican infrastructure industry and in the still-booming energy

industries. Opportunities will also be presented by the continuing rise of the fintech industry and by the implementation of the governmental programme for the economic reactivation during 2021 and onwards. The outlook for the Mexican PE industry is, therefore, positive, with local funds becoming more global and deploying capital, and investments by foreign funds increasing throughout the energy sector.

We predict that the regime governing publicly issued PE funds will continue to be improved, and that the regulations regarding investment restrictions applicable to Mexican pension funds will necessarily evolve towards alignment with the types of regimes seen in other, more evolved countries, allowing the pension funds to conduct private transactions and investments in funds or projects directly (rather than only through publicly issued securities such as CKDs, FIBRAs, FIBRA Es

and CERPIs).

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# Recent regulatory developments in the Mexican electricity sector

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## ▪ (A) SUPREME COURT RULES ON CONSTITUTIONAL CLAIM FILED BY COFECE AGAINST THE SENER RESOLUTION

On February 3<sup>rd</sup>, 2021, the Second Chamber of Mexico's Supreme Court of Justice (the "Supreme Court") issued a final ruling on the constitutional claim filed by COFECE on June 19<sup>th</sup>, 2020 regarding the Resolution for ensuring the Reliability, Security Continuity and Quality of the National Electricity Grid published by the Ministry of Energy ("SENER") on May 15<sup>th</sup>, 2020 (the "SENER Resolution").

The SENER Resolution has been perceived as an attempt by the Mexican government to favor CFE as a State-owned company, so that CFE regains control of the electricity market instead of applying the free market rules set forth in the electricity laws in Mexico.

In addition, the SENER Resolution aims to impose new restrictions for the interconnection of renewable power plants to the electricity grid, in order to favor and prioritize the interconnection of conventional power plants owned by CFE. In addition, the SENER Resolution aimed to impose roadblocks for the issuance of new generation permits, while strengthening the functions of SENER, CENACE and CFE to plan and operate the electricity grid.

COFECE filed the constitutional claim against the SENER Resolution arguing that (i) it affects free competition in the electricity market; (ii) it affects the principle of open and non-discriminatory access to the grid provided in the LIE; (iii) it compromises the economic dispatch of electricity; (iv) it violates the principle of constitutional supremacy, since the resolution contains provisions that are contrary to those included in the Mexican Constitution through the Energy Reform.

Through its ruling, the Supreme Court declared invalid the following provisions of the SENER Resolution:

- The “strategic projects” to be appointed by SENER for the benefit of CFE;
- granting preferential interconnection to such projects appointed by SENER;
- the feasibility test to be conducted by CENACE for the interconnection of projects;
- granting priority to the reliability of the dispatch, instead of the economic dispatch.

However, the Supreme Court recognized as valid several provisions such as (i) the provision that strengthens CFE’s strategic planning for the reliability of the electric grid; (ii) the imposition of costs to intermittent clean energy generators if additional ancillary services are required to ensure the reliability of the grid; and (iii) the provision establishing that the capacity of intermittent clean energy plants do not contribute to the reliability of the grid, and therefore, such capacity will be considered a decrease in the annual capacity requirements of load servicing entities, proportionally.

Such provisions may still be declared invalid by means of the constitutional claims (*amparos*) filed by industry participants before federal courts, and under other type of legal arguments (i.e. environmental).

## ▪ **(B) BILL TO AMEND AND SUPPLEMENT THE ELECTRICITY INDUSTRY LAW**

On February 1<sup>st</sup>, 2021, Mexican President Andrés Manuel López Obrador introduced

to the House of Representatives (*Cámara de Diputados*) a bill with the purpose of amending and supplementing the Electricity Industry Law (*Ley de la Industria Eléctrica*) (the “Proposed Bill”).

## 1. **Main Aspects of the Proposed Bill**

The main aspects of the Proposed Bill are the following:

1. Dispatch: The Proposed Bill changes the order in which electricity is dispatched to the electricity grid, and suggests the following priority:

- Hydroelectric plants owned by Federal Electricity Commission (“CFE”);
- other power plants owned by CFE (i.e. geo-thermal, combined cycle);
- wind and solar plants owned by private entities;
- combined cycle plants owned by private entities.

By preventing the early dispatch of wind and solar plants that use the most efficient or economic sources of energy (economic dispatch), the Proposed Bill favors dispatch for physical delivery of plants owned by CFE.

2. CELS: Clean energy certificates (“CELS”) are granted to renewable power plants that commenced operations after August, 2014 with the purpose of accelerating the transition to clean energies. The Proposed Bill intends to eliminate such purpose by allowing ageing hydroelectric plants to obtain CELs, thus favoring CFE and eliminating incentives to develop new sources of renewable energy.

3. Long-Term Auctions: The Proposed Bill eliminates the obligation of CFE Suministrador de Servicios to acquire electricity through long-term electricity auctions (*subastas eléctricas*) organized by the National Center of Energy Control (CENACE), due to an alleged scheme in which only private entities benefit to the detriment of CFE.

4. Permits: Permits granted under the self-supply (*autoabasto*) scheme used prior to the Energy Reform in 2013 may be revoked if these are used as a “fraudulent evasion of the law” (*fraude a la ley*) to satisfy the electricity supply needs of third parties.

In addition, requests for generation permits issued by the Energy Regulatory

Commission (CRE) under the Electricity Industry Law (“LIE”) may be denied under criteria related to the planning of the electricity grid.

5. *Independent Producers*: The Proposed Bill also suggests reviewing the agreements entered by CFE with independent producers prior to the Energy Reform based on their legality and the profitability for the Mexican government. Based on such review, the agreements may be re-negotiated or terminated.

### **Effects of the Proposed Bill.**

The Proposed Bill may have the following effects:

1. Higher economic and environmental costs for the final users, including industries, commerce and individuals, by giving preference to energies whose sources are more expensive and harmful to the environment, such as fossil fuels;
2. Undermining the purpose of CELs which is to accelerate a transition to clean energies. Such effect may result in possible violations of international agreements and treaties to which Mexico is a party, such as the Paris Agreement on climate change, as well as other Mexican laws such as the Energy Transition Law (*Ley de Transición Energética*) and the Climate Change Law (*Ley General de Cambio Climático*);
3. Preventing CFE to purchase electricity through auctions will not guarantee lower energy prices to final users. Discretion to purchase electricity may open the door to permanent electricity subsidies in the residential and agricultural sectors, since efficiency will no longer be determining factor to purchase electricity. Such subsidies may result in untenable expenses for the Mexican government and may affect CFE’s finances.
4. The possibility of revoking self-supply permits or denying the issuance of generation permits creates legal uncertainty to investors by either retroactively affecting the conditions under which they made their investments or preventing them to develop their projects in Mexico.
5. Possible violation of the new United States-Mexico-Canada Agreement (USMCA), since the Proposed Bill may fall under the definition of an indirect expropriation.

6. From an antitrust perspective, the Initiative undermines free competition and the efficient development of the electricity market, since it grants a discriminatory treatment to efficient generators and favors CFE.
7. If the Proposed Bill is approved by Congress and the LIE is modified, the affected industry participants may challenge the modified LIE before federal courts by means of amparo proceedings, which could potentially suspend the implementation of the applicable provisions, first on a provisional basis and, subsequently, on a permanent basis when a final ruling is issued by the court. Further, the Initiative may be challenged by the Mexican Antitrust Commission (“COFECE”) through a constitutional challenge filed with Mexico’s Supreme Court.
8. In addition, international investors could potentially file claims under international investment treaties based on the protections provided by such treaties (i.e. no undue discriminatory treatment, no expropriation without compensation, among others).

## **RECIENTES CAMBIOS REGULATORIOS EN EL SECTOR ELÉCTRICO MEXICANO**

### **▪ (A) LA SUPREMA CORTE RESUELVE CONTROVERSIA CONSTITUCIONAL PROMOVIDA POR COFECE CONTRA EL ACUERDO DE SENER**

El 3 de febrero de 2021, la Segunda Sala de la Suprema Corte de Justicia de la Nación (la “Suprema Corte”) emitió su sentencia definitiva sobre la controversia constitucional promovida por COFECE el 18 de junio de 2020, en relación a la Política de Confiabilidad, Seguridad, Continuidad y Calidad en el Sistema Eléctrico Nacional, publicada por la Secretaría de Energía (“SENER”) el 15 de mayo de 2020 (el “Acuerdo SENER”).

El Acuerdo SENER ha sido percibido como una muestra de cómo la política energética del actual gobierno mexicano tiene como objetivo fortalecer a la CFE para que domine el mercado eléctrico, en lugar de que el mercado se rija por los criterios de libre competencia contenidos en las disposiciones legales aplicables al

sector eléctrico.

Asimismo, el Acuerdo SENER intenta limitar la interconexión de centrales eléctricas renovables para dar prioridad a centrales eléctricas convencionales de la CFE, otorgándoles un rol más significativo en la planeación del sistema eléctrico nacional. Asimismo, impone barreras para la emisión de nuevos permisos de generación, al mismo tiempo que fortalece las funciones de la SENER, el CENACE y la CFE para planear y operar la red eléctrica.

COFECE promovió la controversia constitucional contra el Acuerdo SENER argumentando que (i) afecta la libre competencia en el mercado eléctrico; (ii) afecta el principio de acceso abierto y no discriminatorio a la red contenido en la LIE; (iii) compromete el despacho económico de electricidad; (iv) viola el principio de supremacía constitucional, ya que el acuerdo contiene disposiciones que son contrarias a las que fueron incluidas a la Constitución Mexicana a través de la Reforma Energética.

En su sentencia, la Suprema Corte declaró inválidas las siguientes disposiciones del Acuerdo SENER:

- Los “proyectos estratégicos” a ser designados por SENER para beneficio de la CFE;
- el otorgamiento de interconexión preferente en relación a dichos proyectos estratégicos designados por SENER;
- las evaluaciones de factibilidad a ser realizadas por el CENACE respecto a las solicitudes de interconexión para proyectos;
- el orden de despacho que da prioridad a la seguridad del despacho, en lugar del despacho económico.

Sin embargo, la Suprema Corte reconoció como válidas distintas disposiciones, tales como (i) la disposición que fortalece la planeación estratégica de la CFE para la confiabilidad del sistema eléctrico; (ii) la imposición de costos a los generadores de energía limpia intermitente en caso de que se requieran servicios conexos adicionales para asegurar la confiabilidad del sistema eléctrico; (iii) la disposición que establece que la potencia generada por las centrales de energía limpia intermitente no contribuye a la confiabilidad del sistema eléctrico, y por ende, dicha

potencia se considerará una disminución de los requisitos anuales de potencia de las entidades responsables de carga, de manera proporcional.

Dichas disposiciones aún podrían ser declaradas inválidas a través de los amparos interpuestos por los participantes del mercado ante juzgados federales, y bajo otro tipo de argumentos legales (i.e. ambiental).

## ▪ **(B) INICIATIVA PARA REFORMAR Y ADICIONAR LA LEY DE LA INDUSTRIA ELÉCTRICA**

El 1 de febrero de 2021, el presidente de México, Andrés Manuel López Obrador, presentó a la Cámara de Diputados una iniciativa para reformar y adicionar la Ley de la Industria Eléctrica (la “Iniciativa”).

### **1. Principales Características de la Iniciativa**

Las principales características de la Iniciativa son las siguientes:

1. Despacho: La iniciativa cambia el orden para el despacho de electricidad en el sistema eléctrico, y sugiere la siguiente prioridad:
  - Centrales hidroeléctricas de la Comisión Federal de Electricidad (“CFE”);
  - otras centrales de la CFE (i.e. geotérmicas, ciclo combinado);
  - centrales eólicas y solares privadas;
  - centrales privadas de ciclo combinado.

Al prevenir el despacho preferente de centrales eólicas y solares que usan los recursos económicos de energía más eficientes (despacho económico), la Iniciativa favorece el despacho por entrega física de centrales que son propiedad de CFE.

2. CELS: Los certificados de energía limpia (“CELS”) son otorgados a centrales de energía renovable que comenzaron operaciones después de Agosto de 2014 con el propósito de acelerar la transición a energías limpias. La Iniciativa pretende eliminar dicho propósito al permitir que centrales hidroeléctricas más antiguas obtengan CELs. Por lo tanto, se favorece a la CFE y se eliminan incentivos para desarrollar nuevas fuentes de energía renovable.
3. Subastas Eléctricas: La Iniciativa elimina la obligación de la CFE

Suministrador de Servicios Básicos de adquirir electricidad a través de subastas eléctricas organizadas por el Centro Nacional de Control de Energía (“CENACE”), debido a un supuesto mecanismo que sólo favorece a entidades privadas, para el detrimento de la CFE.

4. *Permisos*: Los permisos otorgados bajo el esquema de autoabasto utilizado previo a la Reforma Energética del 2013, podrán ser revocados si se usan como “fraude a la ley” para satisfacer la demanda de electricidad de terceros.

En adición, las solicitudes de permisos de generación emitidos por la Comisión Reguladora de Energía (CRE) bajo la Ley de la Industria Eléctrica (“LIE”) podrán ser negadas bajo criterios relacionados a la planeación del sistema eléctrico.

5. *Productores Independientes*: La Iniciativa sugiere revisar los contratos celebrados entre la CFE y productores independientes previo a la Reforma Energética para determinar su legalidad y la rentabilidad que representan para el gobierno mexicano. Con base a dicha revisión, los contratos podrán ser renegociados o terminados.

## **Efectos de la Iniciativa**

La Iniciativa podría tener los siguientes efectos:

1. Costos económicos y ambientales más elevados para los usuarios finales, incluyendo industrias, comercios y particulares, al dar preferencia a energías cuya fuente es más cara y dañina para el medio ambiental, como lo son los combustibles fósiles;
2. Menoscabo al propósito de los CELs que es acelerar la transición a energías limpias. Dicho efecto podría resultar en posibles violaciones a tratados internacionales de los que México forma parte, como el Acuerdo de Paris sobre el cambio climático, así como otras disposiciones legales en México como la Ley de Transición Energética y la Ley General de Cambio Climático.
3. Prevenir que la CFE adquiera electricidad a través de subastas eléctricas no garantizará precios energéticos más bajos a los usuarios finales. La discreción para adquirir electricidad podría generar subsidios permanentes en los sectores residencial y de agricultura, ya que la eficiencia no será el

factor determinante para la adquisición de electricidad. Dichos subsidios podrían generar gastos insostenibles para el gobierno mexicana y podría afectar las finanzas de la CFE.

4. La posibilidad de revocar permisos de autoabastecimiento o negar solicitudes de permisos de generación genera incertidumbre legal para los inversionistas, ya sea que se vean afectadas las condiciones en las que hicieron sus inversiones de manera retroactiva, o impidiendo que desarrollen sus proyectos en México.
5. Posible violación al Tratado entre México, Estados Unidos y Canadá (T-MEC), ya que la Iniciativa podría caer en la definición de una expropiación indirecta.
6. Desde la perspectiva de competencia económica, la Iniciativa perjudica la libre competencia y el desarrollo eficiente del mercado eléctrico, ya que otorga un trato discriminatorio a generadores eficientes para el beneficio de la CFE.
7. Si la Iniciativa es aprobada por el Congreso y se modifica la LIE, los participantes del mercado que se vean afectados podrán disputar la LIE modificada ante juzgados federales a través de amparos, que podrían suspender la implementación de las dispersiones aplicables, primero de forma provisional, y posteriormente de forma permanente cuando el juzgado emita su sentencia definitiva. En adición, la Iniciativa podrá ser disputada por la Comisión Federal de Competencia Económica (“COFECE”) a través de una controversia constitucional ante la Suprema Corte de Justicia de la Nación.
8. En adición, inversionistas internacionales podrían comenzar disputas bajo tratados internacionales de inversión bajo las protecciones otorgados en los mismos (i.e. trato no discriminatorio, la no expropiación sin compensación, entre otros).

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# Supreme Court upholds suspension of electricity policy

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On October 21<sup>st</sup>, 2020, the Supreme Court of Justice (*Suprema Corte de Justicia de la Nación*) upheld the suspension derived from the constitutional claim filed by the Antitrust Commission (“**COFECE**”) on June 22<sup>nd</sup>, 2020, which argued that the “*Policy of Reliability, Safety, Continuity and Quality in the National Electric System*” issued by the Ministry of Energy (the “**SENER Resolution**”) breaches fundamental competition and free market principles that are mandated by the Mexican Constitution. Therefore, the SENER Resolution will remain suspended until a final resolution is issued.

The SENER Resolution has been perceived as the most significant measure by the current Mexican federal administration to favor the Federal Electricity Commission (the “**CFE**”) as a State-owned company, so that CFE regains control of the electricity market instead of applying the free market rules set forth in the electricity laws in Mexico. It imposes new restrictions for the interconnection of renewable power plants to the electricity grid, in order to favor and prioritize the interconnection of conventional power plants owned by CFE. In addition, the SENER Resolution imposes roadblocks for the issuance of new generation permits, while strengthening the functions of the Ministry of Energy (SENER), the National Center of Energy Control (CENACE) and CFE to plan and operate the electricity grid.

Other recent developments include a resolution issued by the Energy Regulatory Commission (CRE) on October 7<sup>th</sup>, 2020 which amends previous provisions regarding legacy permits – permits granted under former legal regime – which prohibits the amendment of permits to include new load points and limits the inclusion of new offtakers to those who were included in the original expansion plan of the permit. In connection therewith, the COFECE issued a recommendation stating that such

resolution must be submitted to a Regulatory Impact Analysis before the National Commission for Regulatory Improvement, before being published in the Federal Official Gazette, since the resolution has anti-competitive effects to the detriment of private generators.

This last measure is consistent with a memorandum from the President stating that Mexico might need to change its energy policy to be able to rescue state production companies Petróleos Mexicanos (PEMEX) as CFE, going as far as to suggest a constitutional change to the energy reform is not off the table.

### **Suprema Corte confirma suspensión de política eléctrica**

Con fecha 21 de octubre de 2020, la Suprema Corte de Justicia de la Nación confirmó la suspensión derivada de la controversia constitucional impuesta por la Comisión Federal de Competencia Económica (“la **COFECE**”) el 22 de junio de 2020. Dicha controversia constitucional argumentaba que la *“Política de Confiabilidad, Seguridad, Continuidad y Calidad en el Sistema Eléctrico Nacional”* (el **Acuerdo SENER**) viola principios fundamentales de competencia y libre concurrencia que están establecidos en la Constitución Política de los Estados Unidos Mexicanos. Por lo tanto, el Acuerdo SENER permanecerá suspendido hasta que se emita una resolución final en el procedimiento.

El Acuerdo SENER ha sido la muestra más significativa de cómo la política energética del actual gobierno mexicano tiene como objetivo fortalecer a la Comisión Federal de Electricidad (la **CFE**) para que domine el mercado eléctrico, en lugar de que el mercado se rija por los criterios de libre competencia contenidos en las disposiciones legales aplicables al sector eléctrico. Dicho acuerdo limita la interconexión de centrales eléctricas renovables para dar prioridad a centrales eléctricas convencionales de la CFE. Asimismo, impone barreras para la emisión de nuevos permisos de generación, al mismo tiempo que fortalece las funciones de la Secretaría de Energía, el Centro Nacional de Control Energía (CENACE) y la CFE para planear y operar la red eléctrica.

Otros acontecimientos recientes incluyen una resolución emitida por la Comisión

Reguladora de Energía el 7 de octubre de 2020 por la que se modifica la regulación previa respecto de permisos legados - aquellos otorgados bajo la ahora abrogada ley - para prohibir la alta a nuevos centros de carga y limitar la inclusión de nuevos socios autoconsumidores, para que sólo puedan incluirse aquellos que se encuentran en el plan de expansión original previsto en el permiso. Al respecto, la COFECE recomendó someter el anteproyecto a un Análisis de Impacto Regulatorio ante la Comisión Nacional Reguladora de Mejora Regulatoria, antes de ser publicado en el Diario Oficial de la Federación, por representar efectos anticompetitivos en detrimento de generadores privados.

Esta última medida es consistente con el memorándum del Presidente circulado el 22 de julio de 2020. Dicho documento plantea cambiar la política energética del país para poder rescatar a las empresas estatales Petróleos Mexicanos (PEMEX) y CFE, e incluso sugiere que una reforma constitucional podría realizarse para lograr dicho objetivo.

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written by Nader, Hayaux & Goebel | mayo 23, 2023

**The Law Reviews: 9th Edition - By Partners Hans P Goebel, Héctor Arangua, Adalberto Valadez and Associate Miguel A González**

Over the past 19 years, Mexico's private equity (PE) industry has raised over US\$58 billion in capital commitments to PE investments, according to the Mexican Private Equity Association (AMEXCAP). Mexico's strong industrial and manufacturing sectors, along with recent reforms to policies and regulations, have had a positive impact on the PE industry, resulting in double-digit annual growth for the industry. Real estate and venture capital (VC) also had double-digit increases in the same period, of 16 per cent and 12 per cent, respectively. Currently, the number of active fund managers is over 180, with fund managers, or general partners (GPs), active across a range of sectors, and representing a sevenfold growth since the beginnings of the industry in the early 2000s.

In recent years, the Mexican government has been an important participant in and supporter of the PE industry, investing in more than 72 funds<sup>7</sup> through institutional investors such as NAFIN (the national development bank), the Capitalization and Investment Fund for the Rural Sector, Bancomext and Banobras, and through investment vehicle Corporación Mexicana de Inversiones de Capital, SA de CV, or Fund of Funds, which has invested more than US\$885 million in more than 84 funds and co-invested in 17 deals.<sup>8</sup> In addition, the National Institute of Entrepreneurship helped the Mexican VC industry and seed capital ecosystem by investing or co-investing in 41 funds from 2013 to 2016. For 2016, the VC support grew to 100 million Mexican pesos, targeting one fund with an approach to the Asia-Pacific alliance countries, which is now finishing its fundraising period. Finally, domestic pension funds (AFOREs) have played a determinant role in the growth of the PE industry, having allocated more than US\$20.4 billion through 106 capital development certificates (CKDs) and investment project certificates (CERPIs) since 2008. This amount may increase by a further US\$5 billion, given the CKDs that are

in the pipeline. Mexico is seen as one of the most favourable emerging markets to invest in, and is considered top in Latin America according to various limited partner (LP) surveys, such as those conducted by the Association for Private Capital Investment in Latin America in 2014 and 2015, and by the Emerging Markets Private Equity Association in 2015, 2016 and 2017.<sup>9</sup>

Mexico returned to the World Economic Forum's (WEF) list of the top 10 countries to invest in globally, by rising four positions to number nine, sitting alongside the United States, China, Germany, India, the United Kingdom, Brazil, France, Australia and Japan. The Mexican economy is being reshaped, and in spite of an adverse economic environment, allows dynamism of its international trade, and the structure of its debts minimises the impact of external factors making it a healthy option for investing. The WEF ranks Mexico in 46th place, out of 140 countries, in the 2018 edition of the competitiveness index, which shows that the country has microeconomic and macroeconomic institutions with strong foundations. Mexico is placed as the second-largest economy in Latin America (with an estimated GDP of US\$1.222 trillion) and it is considered to have economic stability that has allowed to remain stable despite various difficulties. The Mexican economy has grown at an average annual rate of 2.5 percent for the past 10 years, mainly because of the implementation of new regulations to improve development, sensible monetary and fiscal policies, ordered management of public finances led by the Bank of Mexico, and a gradual improvement in the country's external environment, despite a zero per cent growth being estimated for 2019. The World Bank suggests Mexico might be the world's seventh-largest economy by 2050 - a positive outlook that will only serve to attract direct foreign investment.

The PE industry and the VC sector in Mexico continue to grow and mature. The internationalisation of both funding sources and investment by domestic GPs suggests that Mexico is playing an increasingly influential role in financial and economic growth at both the regional and global levels. Within VC alone, Mexico has witnessed the number of GPs triple in the past seven years. The policies being implemented in Mexico, particularly the opening-up to competition of the energy and telecommunications sectors, and labour market reforms, have been welcome steps to attract investment and raise employment and, potentially, growth.<sup>13</sup> This is evidenced by the extent to which infrastructure and energy funds have also

increased significantly, reaching 30 funds in 2016 – a clear effect of the energy reform allowing private investments in the energy sector, including oil and gas, electric power generation and renewable energy. As at October 2017, an estimated US\$25 billion in cash reserves were available for investment by PE funds investing in Mexico.<sup>14</sup>

Likewise, accumulated capital commitments from 2018 to September 2019 increased by 1.7 per cent. These capital commitments were mainly concentrated on seed and early stage VC funds.<sup>15</sup> As at September 2019, three new Mexican funds had been formed, bringing the number of funds operating in Mexico to 126, of which 60 per cent are now investing or managing their investments, while almost one-third are still at the fundraising stage.<sup>16</sup>

In general, information about PE funds is not publicly available during the fundraising stage unless the funds are public funds raised in the securities market, such as CKDs, CERPIs or Mexican real estate trusts (FIBRAs).

The Mexican fundraising market has been in an upward trend since 2014. In the past, the most attractive sector has been real estate, but recently the VC sector has clearly been rising. Mexican PE funds are active, growing and covering a large spectrum of industries (business and financial services, consumer goods, healthcare, technology, oil and gas, etc.). VC funds mainly invest in consumer services, fintech and technology; real estate funds mainly target

the industrial (mostly automotive, aerospace and pharmaceutical), commercial, tourism and housing sectors; and the infrastructure and energy funds are currently concentrated in the oil and gas sector. In March 2018, the Law Regulating Financial Technology Institutions (the Fintech Law) was enacted, providing for regulation of, among other things, electronic payments, cryptocurrency transactions and crowdfunding mechanisms. According to Fintech Radar Mexico, conducted by Finnovista in May 2019, Mexico is very close to reaching the 400 fintech start-up mark, and, in 2019, it regained leadership as the largest fintech ecosystem in Latin America, in part because of a strong presence of entrepreneurship and e-commerce.<sup>17</sup> The Mexican fintech industry has shown an annual growth rate of 29 per cent, with the creation of 98 new start-ups, with the dominating sectors being loans, payments and remittances.<sup>18</sup> Reports from recent years have highlighted the

high growth rates of fintech in Latin America, such as LAVCA's 2017 Trend Watch: Latin American Venture Capital, which concluded that the fintech sector represents 25 per cent of the venture investments in information technology in the region. According to a survey conducted by Finnovista in collaboration with Endeavor, Mexican fintech companies have a monthly gross transaction value of 39 billion Mexican pesos, with an average of 8.7 million Mexican pesos being billed per fintech start-up per year. These results emphasise the importance and the possibilities of fundraising and VC investment in the development of the fintech ecosystem in Mexico. As the fintech industry represents a massive potential growth area in Mexico, the government has passed legislation that seeks to ensure financial stability and provide a defence against money laundering and corruption.

## **OUTLOOK**

The private equity industry in Mexico has been re-energised in recent years by government reforms and policies, a stable macroeconomic situation, stable population growth rate, an increase in real income and an active entrepreneurial ecosystem. Mexico has successfully completed USMCA (which is expected to supersede NAFTA) negotiations with the United States and Canada and has gone through a smooth, peaceful and democratic power transition following the presidential election that took place in July 2018, providing certainty to investors. However, Mexico's intention of being prepared for any scenario is clear from its aim to increase trade with Argentina and the Pacific Alliance (Colombia, Peru and Chile), as well as with the European Union and Asian countries, and from the government's continued efforts over the past few years in the infrastructure and energy sectors.

While the forecasts are moderately strong, we expect contract and investment opportunities to be abundant as government policies support a shift towards a larger role for private investment in the Mexican infrastructure industry and in the still-booming energy industries. Opportunities will also be presented by the continuing rise of the fintech industry. The outlook for the Mexican PE industry is, therefore, positive, with local funds becoming more global and deploying capital, and investments by foreign funds increasing throughout the energy sector. If conditions remain the same and the growth rate remains at the levels we have been seeing, the PE industry should, according to AMEXCAP, reach US\$80 billion by the end of 2020. We predict that the regime governing publicly issued PE funds will continue to be

improved, and that the regulations regarding investment restrictions applicable to Mexican pension funds will necessarily evolve towards alignment with the types of regimes seen in other, more evolved countries, allowing the pension funds to conduct private transactions and investments in funds or projects directly (rather than only through publicly issued securities such as CKDs, FIBRAs, FIBRA Es and CERPIs).

[To read the full article, click here](#)

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# COP 26 Private Finance Agenda launched

Category: Banking & Finance, Energy, Legal Alerts, Project Finance, Tax  
written by Nader, Hayaux & Goebel | mayo 23, 2023

On February 27, 2020, the 'COP26 Private Finance Agenda' was launched in London (the "**Agenda**").

The Agenda aims to assist the private sector in its transition to a net zero carbon economy.

The objective is to achieve that every professional financial decision takes climate change into account. The Agenda will focus on creating the right framework for reporting, risk management and returns to help finance a whole economy transition. The foregoing will require that every company, bank, insurer and investor will need to adjust their business models for a low carbon world.

The COP 26 - co-hosted by the UK and Italy - will also seek to support developing countries to deliver a prosperous, zero carbon future for all.

For more information on the Agenda, please find the link to the corresponding page <https://www.bankofengland.co.uk/events/2020/february/cop26-private-finance-agend>

[a-launch](#).

We will be following up on the work and development of the Agenda in a timely manner, and we remain at your service in case you have any comments regarding the above and to provide you with the advice you require regarding the implementation of the Agenda and the evaluation of its impact on your operations.

*For further information with respect to the COP26 Private Finance Agenda or in respect to the application of the Sustainable Development Goals (SDO) in your business, please reach out to your regular contacts at Nader, Hayaux & Goebel or Yves Hayaux-du-Tilly L. +52 (55) 4170 3003 [yhayaux@nhg.com.mx](mailto:yhayaux@nhg.com.mx).*

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# **Business Plan of Petróleos Mexicanos**

Category: Energy, Legal Alerts, Tax

written by Nader, Hayaux & Goebel | mayo 23, 2023

On July 16 of 2019, the director of Petroleos Mexicanos (“PEMEX”), Octavio Romero, announced the Business Plan of PEMEX and its Productive Subsidiaries for 2019-2023 (the “Business Plan”). In this regard:

1. Principal milestones for 2023.
2. PEMEX’s current situation
3. Tax Reduction
4. Private Sector
5. Principal Projects 2019-2023
6. Expert opinions

To read the full newsletter, please download the PDF [here](#).

For further information with respect to the business plan, please get in touch with your regular contacts at Nader, Hayaux & Goebel.

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# Energy specialists contribute to the Latin Lawyer Reference Guide 2019 on Oil & Gas

Category: Energy, Publications

written by Nader, Hayaux & Goebel | mayo 23, 2023

[Héctor Arangua](#), [Adalberto Valadez](#) and [Oscar Vázquez](#) have contributed the chapter on Mexico in the [Latin Lawyer Reference Guide on Oil and Gas](#). The Reference provides answers to key legal and regulatory questions in Latin America in relation to the energy sector, with a special focus on Oil and Gas.

Contributing editor is Carlos Albarracín, partner at Milbank, Tweed, Hadley & McCloy LLP. The complete article can be downloaded [here](#).



# NHG's Energy specialists contribute to the Latin Lawyer Reference on Oil & Gas

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written by Nader, Hayaux & Goebel | mayo 23, 2023

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## London calling: reflections on bilateral trade between the UK and Mexico

Category: Banking & Finance, Capital Markets, Energy, Infrastructure, PPPs and Government Procurement, Insurance and Reinsurance, Mergers and Acquisitions, Publications, Uncategorized

written by Nader, Hayaux & Goebel | mayo 23, 2023

In an extensive interview with Christina Mckeon Frutuoso of Latin Lawyer, Nader, Hayaux & Goebel's resident partner in London, Yves Hayaux-du-Tilly Laborde, reflects on how far bilateral relations between the UK and Mexico have come and whether Brexit and the election of Donald Trump in the US will make that

relationship stronger.

A transcript of the interview, which was first published on Latin Lawyer's website on 23 April 2018, is rendered below:

***Latin Lawyer: Where is UK-Mexican trade currently looking positive?***

Yves Hayaux-du-Tilly: The food and drinks industry is growing on both sides: whiskey is being exported to Mexico - it represents around 8% of exports into Mexico - and tequila imported to the UK. There's a massive consumer market now in Mexico, a country with a huge demographic and an increasing number of young consumers. Mexican restaurants are also growing exponentially in the UK. There's a lot of appetite for these kinds of projects.

Insurance investment has also been positive on both sides. There's currently only two Latin American investors into Lloyd's of London, both of which are Mexican, which is both a recent and important development.

***LL: What makes Mexican investors more attractive than other Latin American insurance investors, using Lloyd's as a case study?***

YH: I think the fact that the only two Latin American investors are both Mexican has to do with the sophistication of Mexican insurance companies; the appetite that Lloyd's and the London market has for Mexican risk; the volume [of risk] is also quite attractive; and the reputation of Mexican insurance companies which is very good.

***LL: Which other sectors have seen strong relations between the two nations?***

YH: Fintech is going to grow in a very important manner. The UK government has been extremely helpful and engaged in sharing best practices with Mexico in relation to the recently passed fintech law, especially concerning the sandbox concept and how the FCA has been dealing with it. Mexican companies [in London] are now looking forward to bringing some of the best practices they have learnt here over to Mexico.

***LL: Where do you see room for improvement in UK-Mexico trade?***

YH: We have all heard about UK Export Finance (UKEF)'s £5 million pound facility [pledged to help UK businesses looking to export to Mexico] which is very important, but not enough has been done to employ that £5 million in actual loans to British companies. There's only really been one project so far, the Metrobus project, funded by Santander, which will see the export of British double decker buses to Mexico City. But considering the sum available, I think there is more to be done.

***LL: In what industries can we expect this UKEF money to be invested?***

YH: I think a lot will go into energy, as was discussed at UK Mexico day last month, and the UK is already leading investments into Mexico's oil and gas sector. The number of British companies that have been successful in their bids exceeds any other nationality in general terms. You have the big companies like BP and Shell, but other lesser-known companies like Capricorn and Premier Oil are finding great ground to develop with the opening of Mexico's oil and gas industry.

***LL: Where has investment been disappointing between the two nations?***

YH: What's been most disappointing is the number of infrastructure projects in Mexico in general terms. There has only really been the one major project - the Mexico City airport - which of course has been very successful: a number of British companies have been involved in the project, including [British design and engineering firm] Foster and Partners, as well as others involved in the construction, supervision and engineering side of things.

A lot was said [by the Mexican administration] about doubling the capacity of ports and more social infrastructure at federal level but really, we haven't see this materialise. I wanted to see more major projects aside from hospitals or highways. There is the train project between Mexico City and Toluca currently underway, but there are question marks over the benefits of such a project. There was also the high-speed train to Guadalajara project, which was cancelled.

***LL: A number of UK law firms have opened up offices in Latin America recently [Kennedys, Clyde & Co LLP and DAC Beachcroft]. Do you think we can expect to see more opening in Mexico?***

YH: I don't really think many other firms are interested in opening up an office in Mexico. Most English firms we work with have not contemplated this and are quite happy working with Mexican independent firms. The only thing that might bring about this change would be a tremendous increase in capital markets and energy work. But for now, everyone seems happy to continue working on a cross-border basis and relying on local counsel for the Mexican components. Of course, there are firms like Hogan Lovells and Norton Rose Fulbright [expanding in Mexico] that have decided not to work like that, but it's debatable whose approach is best.

***LL: Going forward, how can the UK and Mexico make bilateral relations stronger?***

YH: The only way we are going to be able to make this bilateral relationship work is through more engagement on a personal level from key stakeholders. This is something Nader Hayaux has previously considered, back in 2010 when we opened in London. We were in the midst of the financial crisis, coming from the boom of the 2000s when the problem at the time for lawyers was getting the work done, there was so much of it. That all then changed once the stock markets crashed. At the time, we were concerned over relying so much on the US, and we wanted to have more sources of work and relationships. Part of our decision to open in London was that we needed to divest our interest, and we saw that no Mexican firm was doing enough to develop relationships with European law firms and clients. By opening an office here, we were thinking long-term.

***LL: Tell us about the role of the Mexican Chamber of Commerce, which you founded in 2011.***

YH: When we [Nader Hayaux] opened our office in London, we also set our sights on helping to form a Mexican Chamber of Commerce to create a platform to permit private sector organisations and governments to collaborate with a mutual aim to grow trade and investment between UK and Mexico. Trade between the two countries is £3.6 billion, but more needs to be done. We hear a lot of rhetoric about the importance of Mexico for the UK, but the city of London is not pulling its weight in terms of allowing New York dominance over Mexican financial services. The UK would benefit from being more present, for example in areas like asset management,

but I'm still waiting to see how long it will take London to put up a fight against New York to get more Mexican business. So far, New York dominates completely - there are currently only two UK banks and only one UK insurance company, Bupa, in Mexico.

***LL: Why do you think London, until now at least, has been hesitant to put up this fight?***

YH: My theory is that the UK has been very comfortable with Europe, and their presence in Southeast Asia, in former colonies, is stronger than in Latin America. There probably is this perception that the US dominates and controls Latin America, and the UK has a natural tendency to leave Latin America to the US. But Brexit and the Trump administration have pulled all of this into question. Today, nothing is to be taken for granted.

***LL: How has Brexit and the Trump administration affected legal practice around the world?***

You've probably heard Einstein's definition of stupidity - doing the same thing and expecting different results. But times have changed, and I think Einstein fell short - nowadays, it seems stupidity is doing the same thing and expecting the same results! If countries continue dealing with Trump's US as they have dealt with the US in the past, their expectations are going to fall short. This attitude applies to the legal industry also - lawyers can't expect to practise law in the same way they did even five years ago. The Trump administration and Brexit have caused Mexico, the US and the UK to rethink their relationships. As a result, the UK government has singled out and made clear the relevance and importance it now places on its relationship with Mexico in a post-Brexit era.

***LL: So Nader Hayaux feels prepared to face the challenges that come in a post-Brexit era?***

Nowadays, law firms have Trump and Brexit as sources of potential work and relationships; when we opened in London in 2010, the financial crisis was our backdrop amid concerns that we were relying on the US so much. I think we are in the right place at the right time, as a result of the long-term project we set out on

when we opened here in London. But opportunities are like red buses – you might be waiting for a while, and then suddenly five come at once. What’s important though, is to be standing in the bus stop, in order to see them coming.

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