

Energy Disputes

Contributing editors

William D Wood, Neil Q Miller, Holly Stebbing, Lauren W Varnado
and Ayaz Ibrahimov



2018

GETTING THE
DEAL THROUGH

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William D Wood, Neil Q Miller, Holly Stebbing,
Lauren W Varnado and Ayaz Ibrahimov
Norton Rose Fulbright

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Preface

Energy Disputes 2018

Third edition

Getting the Deal Through is delighted to publish the third edition of *Energy Disputes*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on India.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, William D Wood, Neil Q Miller, Holly Stebbing, Lauren W Varnado and Ayaz Ibrahimov of Norton Rose Fulbright LLP, for their continued assistance with this volume.

GETTING THE
DEAL THROUGH

London
January 2018

Mexico

Enrique González Calvillo and Diana Maria Pineda Esteban

González Calvillo, SC

General

1 Describe the areas of energy development in the country.

Since late 2013, the industry in oil and gas and power generation has been opened to private participation in financing and direct investment and operation in activities that were traditionally reserved to state-owned companies, such as *Petróleos Mexicanos (Pemex)* in the hydrocarbons sector and the *Federal Commission of Electricity (CFE)* in the electric industry. Four years after the Energy Reform was enacted, the country has ended the 75-year state oil monopoly and opened oil and gas exploration and production to private investment, through the execution of international public bids. In July 2017, the Energy Reform produced one of its most surprising results at the international level in terms of oil and natural gas exploration, with the fifth largest discovery in the last five years, after the tender of 36 investment projects in the oil sector. In this way, the reality refutes bluntly those who have doubted the benefits of this reform in terms of raising the national platform for production of oil and natural gas, the income obtained by the government and the energy security of the country. It is a historic discovery in the international oil market, as it includes one of the 20 projects in shallower waters worldwide, thanks to which the Mexican government will obtain between 83 and 70 per cent of the income calculated as a result of these investments and, as a whole, a 7.5 per cent increase in national gas production is guaranteed. In early November 2017, Pemex announced a discovery of a new oil field near *Cosamaloapan, Veracruz*, with a volume of more than 1,500 million barrels of oil and 350 million barrels of reserves, proven, probable and possible. This is the company's most important discovery in the last 15 years.

The establishment of these new industries within Mexico has represented a challenge not only for regulators, but for courthouses as well. We are beginning to get the first judgments after the Energy Reform was enacted, creating judicial precedents and interpretations of the law that are novel to all.

Midstream and downstream activities

After several delays due to regulatory adjustments, Pemex Logística, a subsidiary of Pemex, executed in May 2017 the first open season tender procedure to allocate, for the first time, capacity rights to private parties in its pipelines and storage facilities within northwest Mexico. Big trading and refining firms, as well as international oil companies and local retail station groups participated in this first procedure, which was allocated in full to the Mexican subsidiary of *Andeavor (previously Tesoro Corp)*. As a result, the awarded company now has capacity rights in nine storage terminals and two pipelines, owned and operated by Pemex. It is the first time that the logistics branch of Pemex has been a service provider for third parties. Following open season, tenders will be announced in early 2018.

Gas sector

The Mexican energy regulator (CRE) established a single natural gas distribution zone spanning the national territory, one of several upcoming changes to how distribution companies operate in the country. This change is expected to streamline the approval process for operating permits, remove barriers to expand distribution networks and reflect the changes introduced by the Energy Reform. The CRE is working on achieving a more safe and certain natural gas market,

which is currently heavily reliant on US exports to Mexico. In parallel, the *National Hydrocarbons Commission (CNH)* tendered several gas oilfields this year, which were majorly awarded to the Mexican firm *Jaguar Exploración y Producción (five in total)* and its consortium with *Sun God Energia de Mexico (six in total)*. Upon execution of the licence agreements with CNH, Jaguar will become a major operator and potential important trader in the natural gas industry in Mexico.

Power generation

The new wholesale power market has been evolving rapidly since it opened in 2016. During 2017, the *National Energy Control Center* received bids for 3TWh, with the lowest bids being 1.77¢/kWh from a multinational company, which represented a record in terms of green electricity, just beneath the 1.79¢/kWh from Saudi Arabia. This latest auction was Mexico's third and was the first to include a pre-qualification process, which is a sign of tightening rules and transparency. Additionally, CRE approved the methodology to calculate the new retail tariff in November 2017, a policy long awaited by market participants. In long-term plans, the *National Energy Strategy Plan for 2013-2027* establishes as a strategic priority the reduction of fossil fuel generation by promoting potential renewable energy sources (hydroelectric, wind, geothermic, solar and nuclear), to achieve higher percentages of electricity produced from non-fossil fuels – 35 per cent target for 2024, 40 per cent by 2035 and 50 per cent by 2050 – and to maintain carbon emissions that are virtually unchanged.

2 Describe the government's role in the ownership and development of energy resources. Outline the current energy policy.

Different from other countries where landowners own the mineral rights of the hydrocarbons within its subsoil, in Mexico such rights are reserved to the state. As provided by the Constitution, all hydrocarbons in the subsoil are owned by the state. They are inalienable and no concessions will be granted. With an aim to contribute to the state's earnings, as well as the long-term development, the exploration and extraction of oil and other hydrocarbons is carried out through allocations made to the productive state enterprises, as Pemex, or through a contractual basis with such productive state enterprises or private entities. In any case, all assignments or contracts shall provide that the hydrocarbons have the original property of the state. Depending on the type of exploration and production (E&P) contract, in licences and production-sharing agreements, private ownership of extracted hydrocarbons is permitted.

According to Mexican law, the ownership of the land is different from the ownership of the subsoil and the natural resources located underneath, as the state may grant exploitation and extraction rights without transferring property land rights. Notwithstanding this, the Energy Reform allows private ownership of the extracted hydrocarbons, depending on the type of contract awarded.

As for real estate issues, the Hydrocarbons Law provides that the activities within the hydrocarbons sector are matters of public interest and, accordingly, shall prevail over any other use of the surface or subsoil.

With a similar policy, the Constitution provides that the nation owns geological, geophysical, petro-physical and petrochemical information, and all information obtained from the E&P activities carried

out by Pemex, any other state company, or private entities. The CNH will collect, protect, use, manage and update such information through the National Centre of Information on Hydrocarbons. Contractors are required to deliver to the CNH all the information obtained in the execution of exploration phases. Discretionally, the CNH may conduct surveys through third parties to confirm or increase the information on energy resources.

Commercial/civil law – substantive

3 Describe any industry-standard form contracts used in the energy sector in your jurisdiction.

Within the oil and gas business, while the state continues to own all forms of hydrocarbons in the subsoil, including those located in shallow and deep waters, the state may, on behalf of the nation, enter into contracts for exploration and production activities. To date, four types of contracts are regulated by the Hydrocarbons Law and the Hydrocarbons Revenues Law:

- service contracts, where companies are paid to execute the activities on behalf of the state, but do not grant mineral rights;
- profit-sharing contracts, where the contractor acquires the right to explore and produce hydrocarbons from a contract area, assuming all associated risks and costs, in exchange for the reimbursement of some recoverable costs and a specific share of the profits, as indicated by the contract with the CNH. The production will be marketed and sold by the state and the remaining profits belong to the state;
- production-sharing contracts, similar to the profit-sharing contracts, where the contractor bears risks and costs in exchange for a percentage of the production obtained; and
- licence contracts, where the licensee will obtain the exclusive right to execute the exploration and production activities from a specific area and for a certain term. The licensee will obtain the ownership of the hydrocarbons after it has paid taxes, royalties and other expenses, once they are extracted from the subsoil.

The above-mentioned contracts are granted by the CNH.

4 What rules govern contractual interpretation in (non-consumer) contracts in general? Do these rules apply to energy contracts?

In E&P contracts, the Hydrocarbons Law allows alternative dispute resolution mechanisms such as arbitration. However, certain limitations apply to this mechanism as administrative rescission is reserved to federal courts of law. Also, contractual parties cannot submit foreign laws, because it has to be conducted under Mexican federal laws, enforceable through Mexican judicial authorities, conducted in Spanish, and the arbitral award has to be according to strict interpretation of the law.

Furthermore, the Mexican Federal Code of Civil Procedure establishes that Mexican judicial proceedings, writs of execution and attachment orders are not to be issued against Mexican public entities. Also, these entities may not provide guarantees or attachments prior to any judgment or attachment in aid of execution. It is worth mentioning that, due to the Energy Reform, new legislation and entities have been introduced, therefore there are no judicial precedents in this regard as of the date hereof.

5 Describe any commonly recognised industry standards for establishing liability.

Mexico belongs to the civil law and codified tradition, and therefore the general standards to establish liability are provided by the law and in the contract, if agreed by the parties to the extent allowed by law.

Generally speaking, the remedy for tort liability is the re-establishment of the status quo before the damage occurred (compensatory damages), implying the payment of damages and lost profits. The basic contract remedies are specific performance or termination, with damages and lost profits in both cases.

Contracts may regulate the liability with provisions such as breach of contract, whereby the defaulting party may pay damages and lost profits or a contractual penalty of previously liquidated damages.

Recent resolutions by the Supreme Court suggest the allowance of judgments imposing punitive damages, considering the injured rights, the degree of responsibility and the economic situation of the liable

party. In this regard, judges should not only consider a compensation that compensates the damages actually suffered, but there may be aggravating factors that shall be weighed and considered in the quantum of the compensation. The Federal Supreme Court has esteemed that the punitive damages shall fulfil a double purpose: an economic compensation and the dissuasion to avoid damaging actions. It is important to note that these precedents on punitive damages are isolated thesis by the court and do not constitute, to this date, a binding interpretation.

As for strict liability, the premise contained in the Civil Code delivers a wide standard providing that a person that makes use of mechanisms, instruments, apparatus or substances that are dangerous by themselves, by the speed which they develop, by their explosive or flammable nature, by the energy of the electric current they carry or for other analogous reasons, such person is obliged to pay the damage caused, even though there were no illicit actions, unless it is proven that the damage was produced by the inexcusable fault or negligence of the victim. As provided by the Civil Code, negligence occurs when the obligor performs acts contrary to the preservation of the object or fails to perform those necessary acts for it.

Within the exploration and production activities, the contractor or operator is liable for breach of duty within the parameters of the Hydrocarbons Law and the contract awarded to execute the said activities in a specific area. The responsibility of the contractor and operation in the exploration and production activities shall be in accordance with the best international practices. In case of accident, the contractor or operator's liability shall not be limited if it is a consequence of fraud or negligence.

Other liabilities related to the energy sector consist of the repair of any damage to health or the environment through compensation to the affected parties.

6 Are concepts of force majeure, commercial impracticability or frustration, or other concepts that would excuse performance during periods of commodity price or supply volatility, recognised in your jurisdiction?

The Federal Civil Code, which applies to relationships between business entities, does not contemplate any remedies in case of unpredictable circumstances, such as commodity price changes, supply volatility or extraordinary events. However, the parties may agree to include contractual provisions to allow the review of the terms and conditions under certain cases.

As for force majeure, the said legislation contemplates it as a case in which there can be an exemption of liability, although the alleging party may need to prove that such event prevented the execution of its obligations.

7 What are the rules on claims of nuisance to obstruct energy development? May operators be subject to nuisance and negligence claims from third parties?

The claims on nuisance to obstruct energy development may depend on the type of right to develop a specific activity within the energy sector. If the obstruction comes from the state in an unlawful way, the contractor or operator may file a constitutional proceeding (*amparo*) to prevent irreparable damage or loss of rights. On the other hand, if the obstruction is done by a private individual or entity, the affected party may search for remedies within the civil law sphere.

Operators and contractors are subject to nuisance and negligence claims from third parties if their activities cause any damage, either coming from subjective liability, where the operator or contractor may need to be found negligent; or strict liability, where acting with diligence and in accordance with the law does not exempt the operator or contractor from liability.

Additionally, environmental damages and damages to the nation could play an important role within the energy activities.

8 How may parties limit remedies by agreement?

Generally speaking, liability can be regulated by the agreement of the parties, unless the law expressly provides otherwise. The Federal Civil Code allows the parties to agree one or more conventional penalties of liquidated damages in the event a party breaches a specific provision of a contract or the contract itself. Such conventional penalty is subject to limitations regarding the amount, where the liquidated damages may

not exceed the amount of the principal obligation under the contract, and the prevention from claiming such liquidated damages and compensatory damages and loss of profits, unless the conventional penalty was meant to apply for a specific provision within the contract.

Public contracts may provide liquidated damages for the case of breach of contract by the contractor or operator if it fails to fulfil its commitment or has a poor performance due to lack of opportunity or quality in the execution of the works, although such clause may not be interpreted as a limitation of all the liabilities that may be related to the performed activity, due to strict liability, environmental and health liabilities that may be correlative.

9 Is strict liability applicable for damage resulting from any activities in the energy sector?

Yes. The provisions of the Civil Code deliver a wide standard to attribute strict liability when using mechanisms, instruments, apparatus or substances that are dangerous by themselves, by the speed at which they develop, by their explosive or flammable nature, by the energy of the electric current they carry or for other analogous reasons.

Commercial/civil law – procedural

10 How do courts in your jurisdiction resolve competing clauses in multiple contracts relating to a single transaction, lease, licence or concession, with respect to choice of forum, choice of law or mode of dispute resolution?

In the case of disputes related to exploration and production contracts, the parties may provide alternative mechanisms for their solution, including arbitration agreements in terms of the provisions of Title IV of the Book Fifth of the Commercial Code and international treaties on arbitration and dispute disputes to which Mexico is a party. However, cases of administrative rescission are reserved to federal courts of law. In this type of contract there is little room for competing clauses regarding choice of law, because they have to be executed under Mexican federal laws and, in case of arbitration, the alternative dispute resolution method may be enforceable through Mexican judicial authorities.

There has not been any jurisprudence on this matter, due to the recent execution of the first exploration and production contract in Mexico since the Energy Reform.

11 Are stepped and split dispute clauses common? Are they enforceable under the law of your jurisdiction?

The said type of clauses are enforceable under the laws of Mexico, with the limitation that administrative rescission has to be brought before federal courts of law.

The exploration and production contracts entered between an operator with the CNH include hybrid dispute resolution clauses, where the parties may negotiate in good faith, providing also for the assistance of an independent expert or a mediator, arbitration or, if related to administrative rescission, litigation before federal courts of law.

If the project is executed through a service contract with Pemex, under the new Pemex Law, project agreements are governed by the said law and, in its absence, by commercial law. In this regard, the Pemex Law does not contain any restrictions for administrative rescission and expressly allows commercial terms in such project agreements.

12 How is expert evidence used in your courts? What are the rules on engagement and use of experts?

The new exploration and production contracts provide the assistance of an independent expert. However, in the contracts with the CNH, the contractor and the CNH mutual agreement appoint an independent expert that must comply with certain requirements, but the opinions of the expert witness will not be binding on the CNH or to another authority government.

In other types of energy contracts, such as power generation and public works with the CFE, the expert witness's decision is agreed to be binding on both parties and such an independent expert's opinion is final and binding for both parties, except in the event of: inconsistencies in the appointment of the expert, fraud, bad faith or an express mistake in the expert's opinion.

13 What interim and emergency relief may a court in your jurisdiction grant for energy disputes?

Interim injunctions and emergency relief may be solicited to the courts of law. Depending on the type of contract and the parties involved, either civil courts or federal constitutional courts may grant emergency relief to prevent the dispute from inflicting irreparable damage on either party.

14 What is the enforcement process for foreign judgments and foreign arbitral awards in energy disputes in your jurisdiction?

To enforce an award in Mexico, a party must file a request for recognition and enforcement before commercial courts of law. Then such court may notify the defendant and if the parties produce no additional evidence or after such evidence is analysed, the judge issues a judgment. The judge may deny the recognition and enforcement of the award under limited reasons that mirror those provided by the New York Convention.

15 Are there any arbitration institutions that specifically administer energy disputes in your jurisdiction?

The institution may depend on the type of contract. New exploration and production contracts with the CNH are held to ad hoc arbitration with the use of the Arbitration Rules by the United Nations Commission on International Trade Law, and the Secretary General of the Permanent Court of Arbitration in The Hague will be the authority appointing the arbitration proceedings.

Other types of energy contracts, including service contracts with Pemex, may opt for arbitration before the International Chamber of Commerce or the International Centre for Dispute Resolution, among others.

16 Is there any general preference for litigation over arbitration or vice versa in the energy sector in your jurisdiction?

Various administrative pieces of legislation contemplate the possibility of agreeing on arbitration in public contracts. The laws that rule Pemex and CFE contemplated it before the Energy Reform came into force, hence arbitration is a customary clause found in energy contracts.

The inclusion of arbitration clauses in the new exploration and production contracts with the CNH constitutes a step forward into the embracing of arbitration. However, it should be underlined that administrative rescission may be only heard before federal courts of law.

17 Are statements made in settlement discussions (including mediation) confidential, discoverable or without prejudice?

It depends on what was agreed by the parties in the contract.

18 Are there any data protection, trade secret or other privacy issues for the purposes of e-disclosure/e-discovery in a proceeding?

The Mexican Industrial Property Law provides that in a judicial or administrative procedure, the authority shall take the necessary means to prevent third parties from accessing trade secrets. Additionally, interested parties are obliged not to reveal or use any trade secrets.

The Mexican system is still ill-equipped to deal with e-discovery and e-disclosure. If a party is seeking to offer electronic information as evidence in a proceeding, it has the burden of proving its existence.

19 What are the rules in your jurisdiction regarding attorney-client privilege and work product privileges?

Attorney-client privilege is not recognised as such by Mexican law. However, three rules provide for this matter:

- according to the federal law that regulates the exercise of any profession in Mexico, every professional is obliged to strictly keep confidential information that was entrusted to them by its customers or clients, except for mandatory reporting established by law;
- the Federal Code of Criminal Procedures establishes that the attorneys, notary publics, and technical consultants will not be required to testify about the information received, known or in their possession regarding the matters in which they had intervened and have information to be reserved for the exercise of their profession; and

Update and trends

In late 2017, the National Institute of Ecology and Climate Change highlighted that Mexico needs to move to a 'decarbonised economy'. This push is to avoid the average global temperature increasing by more than 1.5 degrees this century. Mexico needs to invest US\$120 billion over the next 12 years, which represents less than half of the current national budget for 2017, making it affordable. However, Mexico has stood out for its commitment on climate change, having a national strategy with a vision of 10, 20 and 40 years and a special programme for the years 2014 to 2018 that serves to address new findings, international agreements and projections in its new version for 2018.

- in a similar way, the Criminal Code applicable in Mexico City, as well as some other Criminal Codes that rule within the states of Mexico, punishes attorneys that attend or help two or more parties with opposing contenders or interests, or accept any sponsorship and supports then the opposing party within the same business.

20 Must some energy disputes, as a matter of jurisdiction, first be heard before an administrative agency?

If there is a breach of the administrative law, yes.

Regulatory

21 Identify the principal agencies that regulate the energy sector and briefly describe their general jurisdiction.

The Ministry of Energy (SENER) is authorised to grant and revoke permits, design contracts and terms for public tenders, approve exploration and production plans, issues licences for petroleum refining, and defines the energy policy. This Ministry assures a sufficient, high-quality and environmentally sustainable energy supply in the country.

The Ministry of Finance and Treasury shall be the one to apply taxes on the use of gasoline and diesel, regulate and control the fiscal terms and conditions of the contracts, and authorise and determine the oil profits.

The CNH manages the bidding rounds of oil and gas exploration and production, and will administer the contracts.

The CRE is empowered to issue permits for transport, storage and distribution hydrocarbons, as well as marketing, distributing and selling oil and gas, and regulating and promoting competition in the entire energy sector.

The National Agency of Industrial Safety and Environmental Protection regulates and manages the industrial safety and environmental aspects of the hydrocarbon sector in the country.

There are also other agencies such as the National Energy Control Centre, which is entitled to operate the national power system, and the National Gas Control Centre, which is in charge of operating the national pipeline system, among others.

22 Do new entrants to the market have rights to access infrastructure? If so, may the regulator intervene to facilitate access?

According to the Hydrocarbons Law, all permit-holders providing transportation, distribution or storage services will provide open access to their facilities subject to capacity and according to the regulation issued by the CRE. In addition, to encourage competitive prices for consumers and competition among market players, there exists a separation among activities related to transportation of fossil fuels and its derivatives and the marketing of such commodities. Furthermore, private permit-holders may not commercialise hydrocarbons that have been transported or stored in a private party's systems, except in an emergency operational situation, unforeseen or force majeure circumstances. The foregoing to avoid conflicts of interests that may arise whenever a permit-holder is competing with marketing companies with open access. Also, permit-holders may only provide services to other permit-holders (eg, commercialisers or traders, and may only transport and store products they own in whole or in a percentage of capacity determined by the CRE.

The CRE has received 12 formal complaints from users regarding the difficulty that some of their trucks have faced to access certain

storage and distribution terminals (TARs), owned by Pemex Logística. Nine of the total complaints were resolved favourably to the users, implicating that Pemex Logística is mandated to allow access to the TAR's involved.

23 What is the mechanism for judicial review of decisions relating to the sector taken by administrative agencies and other public bodies? Are non-judicial procedures to challenge the decisions of the energy regulator available?

Administrative courts are deemed to be guardians of the rule of law. Mexico has supported the system where administrative and governmental decisions of federal, local or municipal governments can be challenged through two systems: contentious administrative trial, if the administrative act violates the law, or the constitutional procedure called *amparo*, if the administrative right is against the Constitution itself. It is not uncommon for these administrative decisions to be nullified or declared void by these courts.

24 What is the legal and regulatory position on hydraulic fracturing in your jurisdiction?

Despite the broad legislative and regulatory work derived from the Energy Reform, regulations surrounding fracking are not yet fit for purpose. Although Mexico has several blocks of unconventional sources of shale, holding a place near to the sixth largest in the world, there are pending regulations to assure operators can obtain necessary concessions from the National Water Commission (CONAGUA) to use the needed volumes of water required in the fracking process, especially in the areas where there is a lack of aquifers, rivers or not much rain, which are, precisely, the areas where fracking could take place in the northern part of Mexico. The Federal Commission for Regulator Improvement (COFEMER) is currently reviewing some proposed guidelines for the protection and conservation of national waters in E&P activities.

Additionally, regulation also fails to address the treatment of possible by-products of the extraction or industrial process, such as pollutants and contaminants. Nevertheless, fracking is not expressly prohibited by statutory provisions.

25 Describe any statutory or regulatory protection for indigenous groups.

In Mexico, SENER, in coordination with the Ministry of the Interior and other competent authorities, may conduct a social impact study prior to the granting of any entitlement or bid publication for extraction and production contracts and other consultation processes and activities. The results of these activities shall be communicated to the entitlement holders or contractors so as to protect the rights of vulnerable social groups that may be in the affected areas.

In addition, SENER, along with the Ministry of Finance, may establish certain economic obligations that titleholders or contractors must fulfil in order to contribute to the sustainable development of local communities or vulnerable social groups.

Furthermore, those interested in midstream and downstream permits shall deliver to SENER a social impact evaluation regarding the impact that the proposed activities may cause and the mitigation measures that may correspond.

Due to the Energy Reform, the National Agency for Industrial Safety and Environmental Protection shall issue certain rules regarding safety and environmental matters.

Besides the regulation contained in the Energy Reform, Mexico ratified the Convention on the International Labour Organization that acquired constitutional status with the 2011 Human Rights Reform and resolution 293/2011 of the Supreme Court of Justice, in which the jurisprudence of the Inter-American Court of Human Rights is also mandatory and binding for Mexican judges, including the rights of indigenous people to consultation. Therefore, in addition to the social aspects of the Energy Reform, indigenous consultation is not a concession by the state, it is now a right that must be guaranteed.

26 Describe any legal or regulatory barriers to entry for foreign companies looking to participate in energy development in your jurisdiction.

Generally speaking, the restrictions to foreign investment within the energy sector have been removed by the Energy Reform. However, the

secondary laws have established a minimum percentage of local content for oil and gas E&P activities that will increase gradually from 25 to 35 per cent. Some exceptions may apply, such as deep-water activities.

Within the power generation industry, most CFE projects require a certain degree of local content, usually referred to workforce and supplies, depending on the specifications of the project.

27 What criminal, health and safety, and environmental liability do companies in the energy sector most commonly face, and what are the associated penalties?

As for environmental liability, the statutory and regulatory framework is developed at the federal, state and municipal levels, each one of them attending a particular matter within the limits of its jurisdiction. For liability matters at a federal level, which would be applicable to federal energy projects, the most relevant environmental statute is the Federal Law on Environmental Liability. The breaches on environmental obligations carry administrative penalties, such as fines, temporary or definitive closure, administrative arrest, seizure of instruments, or the suspension or revocation of concessions, licences, permits and authorisations. Alongside this, environmental damage may cause civil compensations, through the payment of damages and lost profits and the re-establishment or restoration of any environmental damage caused. Lastly, the Federal Criminal Code provides penalties derived from the commission of crimes against the environment, which may include economic fines and even imprisonment.

Contractors may also be held responsible for damages caused to their employees through the imposition of the penalties contemplated by the Federal Law of Work.

Any other damage may be claimed through the general premise of strict liability, which delivers a wide standard of burden.

Other

28 Describe any actual or anticipated sovereign boundary disputes involving your jurisdiction that could affect the energy sector.

Mexico and the United States naturally share transboundary hydrocarbon deposits that are not necessarily restricted by political borders. Although both countries have agreed to cooperate on such matters, such collaboration may require careful execution on both sides, not only in the exploration and production activities but also regarding oil spills and other environmental damages.

29 Is your jurisdiction party to the Energy Charter Treaty or any other energy treaty?

Mexico is not a member of the Energy Charter Treaty, however, it has entered into many treaties regarding nuclear energy.

30 Describe any available measures for protecting investors in the energy industry in your jurisdiction.

The laws of Mexico provide the same judicial remedies for foreign and local investors, with no requirement for foreign entities to post a bond or other security before defending a suit.

Mexico is mostly open to foreign direct investment in its economic sector. However, prior to the Energy Reform, foreign investment in the exploration and extraction activities of hydrocarbons was not allowed in Mexico. Nevertheless, foreign investment is now fully permitted in such activities.

With several bilateral investment treaties (BITs) and free trade agreements (FTAs), and considering that Mexico has been one of the largest recipients of foreign direct investment within the emerging markets, Mexico has participated in several arbitral procedures where the foreign investor has either settled with the government (eg, *Abengoa v Mexico* and *Metaclad v Mexico*) or been awarded the payment of damages (*KBR v Mexico*, although the award was declared void by a Mexican court of law). In either case, there is no public information that shows a refusal of the Mexican state to honour an arbitral award.

The Energy Reform has helped Mexico to become an attractive destination for both domestic and foreign direct investment. Nonetheless, Mexico still has to remove some exclusions adopted regarding the oil and gas industry in BITs and FTAs, so foreign investors qualify under the relevant treaty to be subject to its protection.

31 Describe any legal standards or best practices regarding cybersecurity relevant to the energy industry in your jurisdiction, including those related to the applicable standard of care.

In Mexico, there is no legislation concerning cybersecurity as such. However, the Federal Law for Personal Data Protection Held by Private Parties makes no distinction between physical or electronic personal data transmission, and therefore all data is protected under the legislation. The cyber police are in charge of prosecuting cybercrimes. However, there are no measures regarding cybersecurity specifically in the energy industry.

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