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Client Alert

International Arbitration and Litigation

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Reform to Mexican Electricity Law to Come into Effect

On March 2, 2021, and after a short-lived debate, the Mexican Federal Senate approved a bill that will modify Mexico's Electricity Industry Law, effectively reversing rights granted to private investors in that sector (the "Reform Bill"). The Reform Bill will be sent now to the executive for enactment and is expected to come into effect in the following days.

Mexico's President, Andrés Manuel López Obrador ("AMLO"), sponsored the Reform Bill in January 2021 calling upon Congress for swift approval. Ever since coming into power in 2018, AMLO's administration has taken a series of measures geared toward gradually dismantling Mexico's 2013 energy privatization reforms.[1] The Reform Bill to the Electricity Industry Law is the most drastic measure taken against private actors in the energy sector thus far.

In short, the Reform Bill (i) changes grid dispatch rules prioritizing electricity generated by Mexico's State-owned utility CFE (*Comisión Federal de Electricidad)*, despite its higher cost and higher polluting emissions compared to other sources; (ii) grants clean-energy certificates to CFE's power plants, even though they did not originally qualify to receive such certificates, diluting the value of certificates that were granted to clean energy generators to incentivize investment; (iii) reviews or revokes existing self-supply permits, a power regime that according to AMLO was secured by fraud and in detriment to CFE; and (iv) prompts a review of long-term power purchase agreements executed with investors, among other changes. These amendments put the economic viability of privately-owned energy projects at serious risk and significantly modify the previous regime upon which investors relied to invest in Mexico's electricity sector.

The Reform Bill has sparked criticism from AMLO's political opponents and industry representatives, who argue that these modifications will restore State monopolies, increase prices paid by consumers, and create an environmental hazard, as it deprioritizes clean energy sources. The United States, Canada and the European Union also have expressed concerns over the Reform Bill and the sweeping changes to the regulatory

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framework. However, AMLO and the AMLO-controlled Mexican Congress have largely ignored these concerns and criticisms.

As with some of the previous regulatory measures, a new wave of domestic legal challenges in the Mexican courts (*amparos*) against the Reform Bill is expected to follow its enactment.

TAKEAWAY

The passage of the Reform Bill is the most recent episode in a continuing saga of regulatory uncertainty in the Mexican energy sector.[1] AMLO's presidential term will end in 2024.

Due to its impact on existing investments in Mexico, the Reform Bill could violate rights afforded by Mexico to foreign investors under international investment treaties. Mexico has investment treaties and trade agreements with approximately 45 countries. These treaties and agreements protect foreign investors from, among other things, discriminatory, arbitrary, and unfair and inequitable treatment by the Mexican Government, as well as from direct and indirect expropriation of their investments. Like other countries that amended their energy regulatory framework, Mexico could see a number of investment treaty arbitrations being launched by foreign investors. As part of a comprehensive defense strategy, investors considering filing local actions, like *amparos*, should asses, in parallel, their remedies under these investment treaties.

King & Spalding's international arbitration team has significant experience in energy disputes across Latin America and worldwide. Ranked the no. 1 international arbitration practice in the world, King & Spalding currently represents investors from across the globe in at least 20 renewable energy arbitrations against different countries due to changes to their renewable energy regulations.

[1] See King & Spalding's Client Alerts of May 12, 2020, and June 19, 2020.