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Mexico Enacts Major Amendments to its Constitution Affecting the Judicial Branch

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An important decree that completely overhauls Mexico's Judicial Branch by amending, supplementing and repealing more than 18 articles of the Political Constitution of the United Mexican States was published in the evening edition of the Official Journal of the Federation on Sunday, September 15, 2024 (the "Amendment").

The main changes to the Judicial Branch brought about by the Amendment include: (i) a new composition of the Supreme Court featuring only 9 Justices (previously there were 11), eliminating the two specialized Chambers of the Supreme Court so that now the Justices will meet only in Joint Sessions; (ii) the election by popular vote of Justices of the Supreme Court, Magistrates of the Electoral Tribunal of the Judicial Branch of the Federation, Circuit Magistrates and Federal District Judges; (iii) the elimination of the Council of the Federal Judiciary, and in its place the creation of the Court of Judicial Discipline and the Judicial Administration Body, assigning five Magistrates for each of said bodies to investigate and sanction judicial officers and to administer the Judicial Branch, respectively; (iv) the prohibition to grant injunctions with general effects in cases involving unconstitutional controversies and actions, as well as in Amparo proceedings against general rules; (v) a maximum of six months is established for the resolution of tax matters; (vi) a salary limit is established for judicial officers, which may not be higher than that of the President; (vii) the creation of anonymous judges in criminal cases when determined to be appropriate.

Aside from requiring Mexico's Congress to issue secondary laws within 90 days so that the Amendment may be implemented, the Amendment will also imply a major logistical and budgetary challenge for the administration of the incoming President, given that in the short term the government will have to remove and, if necessary, legally terminate existing judges, including in such case, formally severing all District Judges, Circuit Magistrates and Ministers of the Supreme Court. The replacements for the departing judges will be elected by popular vote from among candidates determined by the Evaluation Committees constituted for such purposes by the Executive, Legislative and Judicial Branches. Fifty percent of the District Judges and Circuit Magistrates and all the Justices of the Supreme Court of Justice of Mexico will be replaced in 2025, and the rest in 2027.

Further, the states will have a term of 180 days to make the adjustments to their constitutions so that local judges and magistrates of the State Courts will also be elected by popular vote. The local elections must coincide with the date of the special election of federal judges and magistrates scheduled to take place in June 2025, or the regularly scheduled federal elections in June 2027.

With the publication of this Amendment, the deadlines for filing challenges against it have begun to run, mainly through amparo proceedings and actions of unconstitutionality for violations to the human rights of the current judicial officers, and for formal defects in the forced and accelerated legislative process carried out in federal congress and in the state congresses to approve the initiatives that led to the Amendment as presented by the President. Likewise, it is expected that challenges will be filed before international forums, such as the Inter-American Court of Human Rights, for violation of the fundamental principles of judicial autonomy and independence by restricting and politicizing the career of Judges, Magistrates and Ministers by establishing their election by popular vote and not by judicial career merits.

This Amendment to the Judiciary has brought criticism in Mexico based on the political component of the popular election of judges and magistrates, which will necessarily result in incentivizing parties to consider using Alternative Dispute Resolution Procedures as recognized by the Mexican Constitution, such as mediation and commercial arbitration, to resolve disputes. Arbitration organizations typically recruit reputable attorneys whose credentials will generally and likely be better than judges and magistrates elected by popular vote. Following the Amendment, it is quite possible that transborder disputes will be preferably submitted to resolution by arbitration. Of course, to be able to arbitrate a commercial dispute, it is necessary for the parties in the dispute to have included a contractual arbitration provision in the corresponding agreement governing the transaction.

At CCN, we have engaged in an in-depth analysis of this Amendment that will remake Mexico's Judiciary. We are available and prepared to consult with and advise clients as to potential ways to mitigate possible impacts of the Amendment, including any impact to their investments and commercial operations in Mexico, which, despite the Amendment, continue to feature a good level of legal protection for investors. It is worth noting that Mexico is a party to 14 Free Trade Agreements with 50 countries and also has 30 different Agreements for the Promotion and Reciprocal Protection of Investments that promote and protect foreign investment. Added to all of this is the fact that Mexico is a member of the World Trade Organization (WTO) and the Organization for Economic Cooperation and Development (OECD), among other international trade and investment organizations.