

Mexico's Constitutional Amendment on Strategic Areas and Companies

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Today, October 31, 2024, the Decree amending articles 25, 27, and 28 of Mexico's Constitution (the "Constitution") regarding strategic areas and companies (the "Constitutional Amendments") was published in the Official Journal of the Federation, and will enter into force the day after publication.

Changes provided by the Constitutional Amendments include:

- a) Substitute the concept of State-owned "productive" companies for "public" companies, which will no longer be subject to best practices.
- b) Eliminate the possibility of private sector participation in the public services of electricity transmission and distribution.
- c) Establish that private parties will not prevail over the State's public company regarding the other activities of the electric industry.
- d) Indicate that the essence of such State-owned company is its social responsibility and guarantee the continuity and accessibility of the public service of electricity.
- e) Determine that the planning and control of the National Electric System ("SEN" for its Spanish acronym) must ensure national security, energy self-sufficiency, as well as the lowest possible price of electricity, through the State's public company to be established.
- f) Declare that the exclusive functions of the State in the strategic areas of lithium and internet service shall not be considered monopolies, as well as prohibit concessions for the exploitation of lithium.
- g) Recognize that both passenger and freight railroads are a priority area for national development.
- h) Repeal explicitly, but without specific definition, the transitory articles of the 2013 energy reform that run counter to the Constitutional Amendments.
- i) Order the adequation of the corresponding legislation within 180 calendar days.

The Constitutional Amendments represent a significant reformulation of the latest constitutional amendments in energy matters of 2013, with the potential to increase State control and strengthen CFE's participation in the activities of the electricity sector. However, its wording is broad and subject to interpretation, so it is necessary to await secondary legislation to be issued in the future to determine its potential outreach. In this regard, President Claudia Sheinbaum and her cabinet have stated that investment will continue in electricity generation to support nearshoring, and that the State will manage the necessary infrastructure for transmission and distribution. The government has also stated that it will encourage partnerships with private companies to promote the transition to renewable energies, and that the investment structure in the energy sector will be defined in subsequent laws.

Some of the most important aspects to be resolved by the Federal Congress in electricity matters are the following: (i) which public company will be in charge of the control and planning of the SEN; (ii) if the mandate for private parties to not prevail over CFE will be the foundation for priority dispatch only, or if it could include additional measures; (iii) what will be the scope of the public service of electricity, as well as its implications before the Wholesale Electricity Market ("MEM"); and (iv) which aspects of the transitory regime of the 2013 energy reform will be effectively abandoned.

There are also several factors that could impact the implementation of the Constitutional Amendments, including: (i) possible risks of conflict under the UMSCA; (ii) interaction with the private sector to define the regulatory details; as well as (iii) administrative simplification resulting from another proposed bill to further amend the Constitution, which intends to eliminate certain agencies such as the Energy Regulatory Commission.

In general, the full implementation of constitutional amendments is a long-term process. With the publication of the National Energy Plan scheduled for the next few weeks, and the adaptation of the related laws, companies will have greater insights into the potential implications and thus be able to make informed decisions.

At CCN, we have attorneys who specialize in the regulation and proceedings of the Mexican energy sector, who can provide you with guidance on how the Constitutional Amendments could impact you and your company.