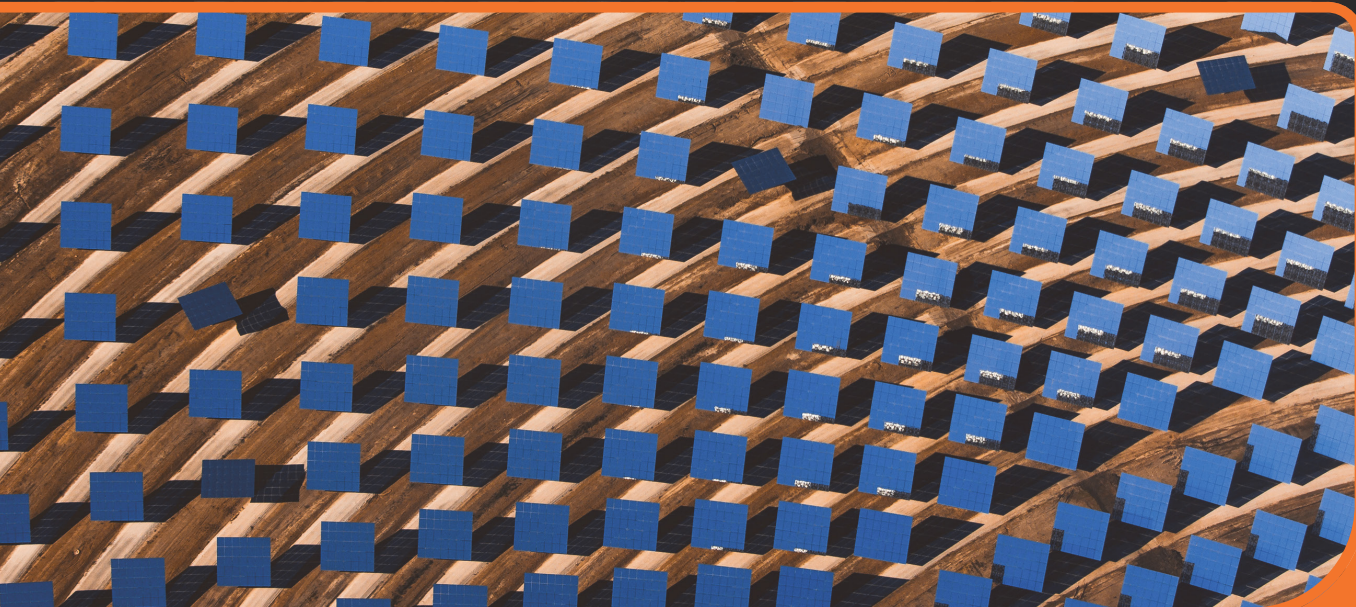


**International
Comparative
Legal Guides**



Practical cross-border insights into renewable energy law

**Renewable Energy
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Second Edition

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ICLG.com

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1 Overview of the Renewable Energy Sector

1.1 What is the basis of renewable energy policy and regulation in your jurisdiction and is there a statutory definition of 'renewable energy', 'clean energy' or equivalent terminology?

Energy policy, as a whole, is dictated by Mexico's Federal Constitution (the "Constitution") and by the international treaties to which Mexico is a party. Such policy is implemented through secondary legislation, grid rules and market guidelines. The concept of "clean energy" is defined in the Energy Industry Law (*Ley de la Industria Eléctrica*, or "LIE") as those energy sources and power generation processes whose emissions or residue, if existing, do not exceed the thresholds established in applicable regulations, including wind, solar, hydro, biomass, geothermal and other commonly known sources.

Although the provisions in the Constitution, international treaties and implementing legislation support the development of clean energy, the current administration has been acting against such principles with the intent to reinstate the national monopoly by establishing unjustified barriers against private energy projects in general and, in particular, against renewable sources on the basis of their intermittent nature and, supposedly, their negative effects on grid reliability.

1.2 Describe the main participants in the renewable energy sector and the roles which they each perform.

The main participants in the renewable energy sector are (i) the Ministry of Energy (*Secretaría de Energía*, or "SENER"), which is in charge of the country's energy policy, (ii) the Energy Regulatory Commission (*Comisión Reguladora de Energía*, or "CRE"), the constitutional autonomous regulator which, among other matters, is vested with the authority to grant power generation permits, (iii) the National Energy Control Centre (*Centro Nacional de Control de Energía*, or "CENACE"), a government agency which acts as independent grid operator, and (iv) *CFE Transmisión* and *CFE Distribución*, two separate government entities that own and operate the country's transmission and distribution assets.

In addition, several private entities participate in the renewable energy sector as generators, qualified suppliers, traders and qualified users.

1.3 Describe the government's role in the ownership and development of renewable energy and any policy commitments towards renewable energy, including applicable renewable energy targets.

In addition to its role as policy maker (SENER), regulator (CRE), system operator (CENACE), and transmission assets owner and operator, the government participates in the generation, supply and trading of power and related products through the *Comisión Federal de Electricidad* ("CFE") and its wholly owned subsidiaries and affiliates.

The official renewable energy target adopted by the Mexican government, which is reflected mainly in the General Climate Change Law (*Ley General de Cambio Climático*) and in the Energy Transition Law (*Ley de Transición Energética*), is to have 35% of total generation based on renewables or clean energy by 2024; however, it has already been recognised that this target will not be met.

2 Renewable Energy Market

2.1 Describe the market for renewable energy in your jurisdiction. What are the main types of renewable energy deployed and what are the trends in terms of technology preference and size of facility?

Although renewable energy projects have been developed in Mexico since the early 2000s, the market is still dominated by non-renewable energy sources, primarily natural gas-fired facilities. While the renewable energy market is developing in the country, it is currently confronting barriers imposed by the administration. The main and preferred sources or types of renewable energy existing in Mexico are wind, solar and geothermal. Biomass projects are beginning to develop, although they are not representative of the current market.

2.2 What role does the energy transition have in the level of commitment to, and investment in, renewables? What are the main drivers for change?

Energy transition is a key driver in Mexico's efforts to achieve a gradual shift from fossil-based power generation to renewable sources of energy to meet the country's clean energy and emission reduction goals. Mexico's energy transition regulation intends to provide clarity and confidence to investors seeking to capitalise on climate risks and opportunities. The main driver for change is sustainability through a portfolio of projects

looking to achieve energy efficiency by means of increased participation in viable clean energy projects. In reality, however, the current administration does not seem to abide by the regulation on energy transition as it seeks to upgrade and operate fossil-fuelled power plants owned by CFE under the excuse of grid reliability.

2.3 What role, if any, has civil society played in the promotion of renewable energy?

Generally speaking, Mexican civil society has not played a relevant role in the promotion of renewable energy in the country. Nonetheless, many non-governmental organisations operate in Mexico, including in the energy sector.

2.4 What is the legal and regulatory framework for the generation, transmission and distribution of renewable energy?

Power generation is a regulated activity in Mexico and, as such, it requires a prior permit by CRE. In 2014, power generation became open to public and private participation; however, grid and market operation, as well as energy transmission and distribution activities, are managed exclusively by CENACE, *CFE Transmisión* and *CFE Distribución*, respectively.

2.5 What are the main challenges that limit investment in, and development of, renewable energy projects?

Since the current administration took office in 2018, the Mexican power industry has been under continuous stress, affecting investments and hindering the development of renewable energy projects. The administration has taken many and separate measures, mostly in the form of changes to the legal and operational framework that directly impact the development, operation and viability of privately owned power projects, with emphasis on renewable energy projects. Those measures include limiting the issuance or amendment of permits and changing dispatch rules based on economic merit in order that projects owned by CFE, most of which are fossil fuel-based, have dispatch priority over all projects, including renewable energy projects.

2.6 How are large utility-scale renewable power projects typically tendered?

Before the current administration took office in 2018, large utility-scale power projects were tendered mainly through two different schemes: (i) long-term (20–25 years) capacity and power contracts awarded directly by CFE through international bidding proceedings; and (ii) long-term (15 years) power and clean energy certificate contracts awarded directly by *CFE Suministrador de Servicios Básicos* (“CFE SB”), a subsidiary of CFE. The current administration has cancelled all such tenders and CFE SB can now purchase power from its own dirty and expensive plants. Furthermore, CFE is bidding the construction of more fossil-fuel power generation facilities under a build-operate-transfer (“BOT”) structure.

2.7 To what extent is your jurisdiction’s energy demand met through domestic renewable power generation?

According to the most recent Development Program for the National Electric System (“PRODESEN”) developed by SENER for the 2021–2035 period, as of 30 April 2021,

renewable power generation (excluding nuclear and efficient cogeneration) represented 28,714 MW, an increase of 12.19% over the same figure for 2020.

3 Sale of Renewable Energy and Financial Incentives

3.1 What is the legal and regulatory framework for the sale of utility-scale renewable power?

In Mexico, there is no specific legal or regulatory framework for these activities. The same framework applies to power generation as a whole.

3.2 Are there financial or regulatory incentives available to promote investment in/sale of utility-scale renewable power?

The main incentive that is available in order to promote investment in renewable power is the ability of the projects to opt for accelerated depreciation of their assets for tax purposes. Mexican development banks also provide soft loans in order to promote investment in these projects.

3.3 What are the main sources of financing for the development of utility-scale renewable power projects?

Financing of renewable power projects in Mexico is mostly provided by the country’s state-owned banks (*Nacional Financiera*, *Banco Nacional de Obras y Servicios Públicos* and *Banco Nacional de Comercio Exterior*); however, Mexican and foreign commercial banks, multinational (e.g. the International Finance Corporation and the Inter-American Development Bank) and export credit agencies (Exim banks), as well as private equity funds, are also active in the sector. Project bonds have also been a source of refinancing of completed projects.

3.4 What is the legal and regulatory framework applicable to distributed/C&I renewable energy?

Distributed/C&I generation is broadly regulated by the LIE, and the CRE has issued guidelines that provide the applicable legal framework for the development and operation of distributed/C&I renewable energy.

3.5 Are there financial or regulatory incentives available to promote investment in distributed/C&I renewable energy facilities?

Please see the response to question 3.2 above.

3.6 What are the main sources of financing for the development of distributed/C&I renewable energy facilities?

Please see the response to question 3.3 above.

3.7 What is the legal and regulatory framework that applies for clean energy certificates/environmental attributes from renewable energy projects?

Mexican law, specifically the LIE and regulations issued by the sector governmental authorities, provides a general legal

framework for the recognition, issuance and trading of Clean Energy Certificates (“CELS”). Broadly speaking, CELs are certificates that are issued by CRE which credit the production of power (1 CEL = 1 MWh) that is generated from clean sources. The Clean Energy Certificates Market is a component of the Wholesale Energy Market (*Mercado Eléctrico Mayorista*) that enables market participants to trade CELs in a spot market.

3.8 Are there financial or regulatory incentives or mechanisms in place to promote the purchase of renewable energy by the private sector?

Government-owned generators and suppliers are treated in the same manner as private entities. Therefore, the same regulations apply to both sectors. Please see the response to question 3.2 above for more details.

4 Consents and Permits

4.1 What are the primary consents and permits required to construct, commission and operate utility-scale renewable energy facilities?

The main permits are (i) a power generation permit, issued by CRE, (ii) positive interconnection studies issued by CENACE, and (iii) interconnection agreement entered into with *CFE Transmisión* or *CFE Distribución*, as applicable. From an environmental perspective, the main permits are: (i) the environmental impact authorisation and the forest-land use change authorisation from the Ministry of Environment and Natural Resources (“SEMARNAT”); (ii) operation of solar, wind and hydropower projects do not require air emissions environmental operating licences; however, other technologies like landfill gas to energy, may require this licence for operation; (iii) hazardous waste generator from SEMARNAT, even if these are generated in small volumes; (iv) registration as a special management waste generator from the state ministry of environment; (v) concession for the use of water; and (vi) wastewater discharge permit from the National Water Commission (*Comisión Nacional del Agua*, or “CONAGUA”), if applicable.

Some projects may require construction permits and concession from CONAGUA for the use or occupation of bodies of water or their federal zone or for pluvial drainage works.

Other local permits required for these types of projects include municipal land use and construction licences, civil protection and operating licences.

Land agreements and rights of way also become a relevant element in the development of renewable energy projects.

4.2 What are the primary consents and permits required to construct, commission and operate distributed/C&I renewable energy facilities?

Please see the response to question 4.1 above.

4.3 What are the requirements for renewable energy facilities to be connected to and access the transmission network(s)?

Connection and access to the transmission grid is achieved through obtaining a power generation permit from CRE, positive interconnection studies from CENACE and the execution of an interconnection agreement with *CFE Transmisión* or *CFE Distribución*, as applicable.

4.4 What are the requirements for renewable energy facilities to be connected to and access the distribution network(s)?

Please see the response to question 4.3 above.

4.5 Are microgrids able to operate? If so, what is the legislative basis and are there any financial or regulatory incentives available to promote investment in microgrids?

No. Transmission and distribution grids must be owned and operated by the federal government through *CFE Transmisión* and *CFE Distribución*.

4.6 Are there health, safety and environment laws/regulations which should be considered in relation to specific types of renewable energy or which may limit the deployment of specific types of renewable energy?

There are no safety or environmental laws specific to renewable energy projects or which may affect their development. General environmental laws and regulations applicable to infrastructure or industrial project equally apply to these types of projects.

In certain cases, municipal authorities have established local taxes to renewable energy projects, especially those in states which have a high natural potential for renewable energy. These laws are, in most cases, unconstitutional and end up being abrogated; however, it is essential to monitor these types of efforts.

5 Storage

5.1 What is the legal and regulatory framework which applies to energy storage and specifically the storage of renewable energy?

Storage of electricity is a practically unregulated activity in Mexico. In general, it is treated as a limited source of generation which must comply with certain requirements to inject power into the grid for the short-term market. In certain cases, CFE has outbid contracts requesting a component of storage as part of the generation facilities.

5.2 Are there any financial or regulatory incentives available to promote the storage of renewable energy?

As storage facilities have been used as a component of generation projects, the same financial incentives that are offered to renewable projects (please see the answer to question 3.5 above) may be available for storage technology.

6 Foreign Investment and International Obligations

6.1 Are there any special requirements or limitations on foreign investors investing in renewable energy projects?

The Mexican Constitution promotes the investment, competition and free market in the power sector, with the exception of the activities of transmission and distribution, which are reserved to the Mexican state.

There are no limitations for foreign investment to participate in the capital of Mexican companies engaged in the generation, supply and trading of electricity and related products.

6.2 Are there any currency exchange restrictions or restrictions on the transfer of funds derived from investment in renewable energy projects?

There are no currency exchange restrictions or controls in Mexico. Investors are free to repatriate their funds at any time.

6.3 Are there any employment limitations or requirements which may impact on foreign investment in renewable energy projects?

There are no special employment law limitations or restrictions in Mexico applicable to renewable energy sources.

Mexican Federal Labor Law (*Ley Federal del Trabajo*) has a clear inclination to protect the interests of the workers over those of the employers. Therefore, companies must carefully administrate the relationship with their employees and implement strategic prevention and control measures to limit their exposure.

According to a recent amendment to several labour, social security and tax laws, in connection with subcontracting of work, companies must directly employ the workers that they need to carry out their core business activity. Companies can only subcontract services outside their corporate purpose and main economic activity. Outsourcing of personnel is prohibited.

In the case of renewable energy companies, the employees necessary to carry out the essential activities to generate electricity must be hired directly by the renewable energy entity. Other personnel dedicated to auxiliary or complementary activities may be subcontracted under specialised services agreements with third parties. Failure to comply with these new regulations may result in substantial negative effects for the relevant entity, including fines, the prohibition to deduct payments of fees under service agreements that do not meet the new requirements, and the loss of value-added tax (“VAT”) payments made to service providers (which would not be reimbursed by the tax authorities). In extreme cases, it may be considered tax fraud, giving rise to criminal liability.

6.4 Are there any limitations or requirements related to equipment and materials which may impact on foreign investment in renewable energy projects?

Generally, all goods must pay import duties and taxes when entering the country. However, generation and related equipment and materials can be subject to preferential import tariffs and quotas, based on the Customs Laws and regulations related to export and production promotion mechanisms, and when they are imported from countries which have Free Trade Agreements with Mexico.

Mexico is active in imposing protective measures, including antidumping quotas, investigations and tariffs on specific equipment. In that sense, and contrary to constitutional and other legal provisions intended to promote the development of renewable energy, photovoltaic (“PV”) solar panels are considered by the customs authorities subject to import taxes (not based on their tariff classification as solar cells, but as they are considered electric generators). These tariffs have been challenged by the affected parties and courts have ruled against the imposition of import tariffs on solar panels.

7 Competition and Antitrust

7.1 Which governmental authority or regulator is responsible for the regulation of competition and antitrust in the renewable energy sector?

The *Comisión Federal de Competencia Económica* (Federal Economic Competition Commission or “COFECE”) is a constitutional autonomous regulator which oversees the application and enforcement of antitrust legislation as well as the regulation of antitrust matters. COFECE has broad powers to regulate competition matters related to the energy sector. Applicable energy laws require COFECE’s opinion in order for CRE to approve transmission and supply tariffs and grant permits for integrated activities. Likewise, the CRE, as the industry regulator, has a legal mandate to promote efficient development and competition in the power industry.

7.2 What power or authority does the relevant governmental authority or regulator have to prohibit or take action in relation to anti-competitive practices?

COFECE has broad powers to investigate cartel behaviour on a *per se* basis, abuse of dominant position actions or events, prohibited mergers, and to declare the absence of competition or the existence of barriers to competition. Sanctions and rulings pursuant to such conducts may result in significant fines (in some cases, up to 10% of the total annual revenues of companies and/or individuals for the last fiscal year), prohibitions for individuals to further participate in the management and/or supervision of companies or governmental entities, unwinding or divestment of businesses and, in the case of cartel conducts, criminal prosecution. In addition, indemnification obligations may apply.

Furthermore, CRE has the authority to revoke permits in case of anticompetitive conducts.

7.3 What are the key criteria applied by the relevant governmental authority or regulator to determine whether a practice is anti-competitive?

In a market where CFE has a dominant position (given its former monopoly status), it is difficult for the CRE to impose anti-competitive sanctions to participants. However, cartel behaviour in Mexico is punishable on a *per se* basis, without the need to demonstrate actual effects over the relevant market or markets. For abuse of dominant position investigations, COFECE performs a thorough analysis in order to determine the relevant market and the assessment of market power of the relevant participant.

8 Dispute Resolution

8.1 Provide a short summary of the dispute resolution framework (statutory or contractual) that typically applies in the renewable energy sector, including procedures applying in the context of disputes between any applicable government authority/regulator and the private sector.

It is common practice in Mexico for government agencies and state-owned enterprises like CFE and *Petróleos Mexicanos* (“PEMEX”), especially in the energy, infrastructure and

construction sectors, to include arbitration clauses in their contracts with private companies. Not only does the legislation in the energy sector allow these agencies and enterprises to agree upon arbitration, but also, in recent years, such agencies and enterprises in the energy sector have adopted a policy to include arbitration clauses in the model contracts used in public bids or tenders.

The change in administration in 2018 as well as the ensuing administrative restructure has led to a growing number of both domestic and international arbitrations regarding construction, infrastructure and energy and contractual disputes between state-owned companies and private parties.

8.2 Are alternative dispute resolution or tiered dispute resolution clauses common in the renewable energy sector?

Yes, as stated above, in Mexico, it is very common for arbitration clauses to be included in contracts in the renewable energy sector. This tendency is, among other reasons: (i) due to the complexity of the disputes that arise in the context of said contractual relationships; and (ii) due to the increased use of arbitration clauses in contracts concluded with sector government agencies and enterprises.

The International Chamber of Commerce and the International Centre for Dispute Resolution have been the preferred international institutions in the energy sector; however, the London Court of International Arbitration (“LCIA”) has increased its Mexican caseload in the last few years. This has been mainly motivated by the inclusion of LCIA clauses in contracts entered into by CFE and PEMEX.

8.3 What interim or emergency relief can the courts grant?

Under Mexican Law, parties may request interim measures in the context of an arbitration either: (i) from a Mexican Court; or (ii) from the arbitral tribunal or emergency arbitrator, in cases where the procedural rules chosen by the parties provide for such option. An interim measure ordered by an arbitral tribunal or emergency arbitrator must be recognised as binding and enforced by a Mexican Court, if so requested, regardless of the state where it is ordered, except if some specific and limited grounds provided by the Mexican law are met.

Under Mexican law, and in international arbitration generally, interim relief is justified only in urgent cases in which irreparable damage is likely to occur and where the party seeking relief is likely to prevail.

Judges and arbitrators both have wide discretion in determining whether to order interim relief. In addition, both Mexican Courts and arbitral tribunals may condition the issuance of interim relief on the posting of collateral by the party seeking interim measures to secure the issuance of the order.

8.4 Is your jurisdiction a party to and has it ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and/or any significant regional treaty for the recognition and enforcement of judgments and/or arbitral awards?

Mexico ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York

Convention”) on 14 April 1971 with no reservations; the New York Convention entered into force on 13 July 1971 in Mexico.

Mexico is also a member state to the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards, which it signed on 12 February 1986 and ratified on 2 November 1987.

Mexico ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”) on 27 July 2018 and it entered into force on 26 August 2018.

8.5 Are there any specific difficulties (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against government authorities or the state?

Amongst others, we consider that the following difficulties may be faced when enforcing a judgment against a Mexican government authority before Mexican Courts:

- (i) The Mexican government authority, as part of the Mexican State, may argue that it has immunity from execution. Pursuant to Article 4 of the Federal Civil Procedure Code (*Código Federal de Procedimientos Civiles*), no execution or enforcement orders or actions may be issued against Mexico and its entities. In light of this provision, it is highly unlikely that a Mexican judge would order the attachment of assets owned by Mexico in the event that it does not comply voluntarily with an award or a judgment.
- (ii) Even if arbitration clauses are usually included in contracts between private parties and government or state-owned enterprises in the energy sector, the Mexican government authority may argue that certain aspects of their commercial relationship may be considered non-arbitrable under Mexican law, and the aforementioned may be used as grounds to set aside an award entirely or partially or to refuse its recognition and enforcement.

For instance, according to the Hydrocarbons Law, a dispute relating to the validity of an administrative rescission or an administrative early termination of the contract cannot be submitted to arbitration. In this sense, under the Law on Public Works and Related Services and the Law on Procurement, Leasing and Services in the Public Sector, both the validity of an administrative rescission and the early termination of contracts cannot be subject to arbitration. In this context, only contractual terminations are subject to arbitration. The effects and scope of these limitations are extensively discussed in Mexico. In addition, the Law on Public-Private Partnerships provides that the revocation of concessions and authorisations in general, as well as acts of authority (*fait du prince*), may not be referred to arbitration. Under such law, the resolution of disputes relating to the legal validity of any administrative act may only be settled by federal courts.

As an example, in *Corporación Mexicana de Mantenimiento Integral, S. de R.L. de C.V. (“COMMISA”) v. Pemex-Exploración y Producción S.A. de C.V. (“PEP”)*, after an award was issued against PEP, Mexican Courts, in set aside proceedings, annulled the award by considering that a Mexican legislation held that the early termination of certain administrative contracts involving public entities was not an issue that could be submitted to arbitration and applied retroactively to COMMISA’s claims. In enforcement proceedings, the New York Court recognised the award on the grounds that the Mexican Court’s retroactive application of the 2009 legislation violated COMMISA’s fundamental rights. Following the decision of the U.S. Courts, PEP ultimately agreed to settle its debt to COMMISA for approximately \$435 million in April 2017.

8.6 Are there examples where foreign investors in the renewable energy sector have successfully obtained domestic judgments or arbitral awards seated in your jurisdiction against government authorities or the state?

The Mexican Congress and the government, through SENER, CRE, and CENACE have issued different laws and regulations intended to limit participation of private entities in the renewable energy sector, which have been perceived as contrary to constitutional principles, international treaties and legal provisions. Affected parties have challenged the validity of these measures through constitutional recourses (*amparos*) and courts have consistently suspended or declared the unconstitutionality of these actions.

Additionally, there are a great number of cases in which foreign investors have successfully obtained arbitral awards against government authorities in Mexico or the Mexican state regarding disputes related to the energy sector. However, investment arbitration cases have not been initiated significantly yet.

9 Updates and Recent Developments

9.1 Please provide a summary of any recent cases, new legislation and regulations, policy announcements, trends and developments in renewables in your jurisdiction.

Background

In 2013, the Mexican Congress approved a Reform to the Mexican Constitution on energy matters (the “Energy Reform”) which ended the state monopoly on the generation, supply and commercialisation of electricity. Private parties may now participate in those activities, while the Mexican State maintains the monopoly on transmission and distribution activities through *CFE Transmisión* and *CFE Distribución*, as well as the control and planning of the national grid through CENACE, a government agency under the Ministry of Energy.

The Energy Reform enables the participation of the private, public and social sectors in the industry, under principles of free competition, and promotes renewable and clean energy sources.

The guiding principles for the energy sector contained in the Mexican Constitution and implementing legislation include: (i) efficient operation; (ii) non-discriminatory open access to the grid; and (iii) a wholesale electric market (*Mercado Eléctrico Mayorista* or “MEM”), where all participants could sell and purchase electric energy and associated products.

Current government’s policy

During the 2018 elections, Andres Manuel López Obrador (“AMLO”), Mexico’s current President, expressed his clear intention to centralise the industry and recover the market power that CFE had before the Energy Reform.

Since his arrival to power, AMLO and his *Morena* party have issued numerous legal and regulatory measures, the main purpose of which is to reinstate the national monopoly by displacing private participants and restricting renewable energy generators alleging that their intermittent nature affects the security and reliability of the national grid.

Amongst these, the different authorities (SENER, CRE and CENACE) have issued the following actions, most of which have now been annulled by courts as they have been deemed unconstitutional:

- (i) SENER’s CELs Decree: eliminated the restriction over power plants in operation before the Energy Reform (mainly owned by CFE) to credit CELs in the market. This restriction was originally established to incentivise the development and construction of new renewable power plants. Without this restriction, the CELs market would be flooded with certificates awarded to old plants, killing the expected economic incentive. The CELs Decree has been annulled by Mexican Courts.
- (ii) CENACE COVID Decree: CENACE suspended the pre-operative interconnection tests for solar PV and wind power plants, under the pretext that due to the reduced consumption of power caused by the COVID-19 pandemic, connecting these plants to the grid would compromise the security system. The CENACE Decree was suspended by courts and later annulled due to its unconstitutionality. Affected plants have entered into operation.
- (iii) SENER’s Reliability Policy: through the Reliability Policy, SENER attempted to establish new criteria and requirements to restrict the dispatch and interconnection of renewable power plants to the national system. It has been declared unconstitutional by Mexican courts and revoked by SENER.
- (iv) CRE/CFE’s Increase of Wheeling Tariffs: CRE approved the increase of wheeling charges for private projects in operation before the Energy Reform (grandfathered) in percentages of up to 800%, which rendered such projects economically unviable. These increases have also been challenged and suspended by courts.

Reform to the LIE

On 9 March 2021, a reform to the LIE (the “LIE Reform”) was enacted, including, among others, the following changes:

- (i) to modify the dispatch order of power plants interconnected to the SEN to privilege plants owned by CFE (eliminating economic merit order);
- (ii) to condition the granting of generation permits by CRE to the SEN’s planning criteria issued by SENER, including the possibility of not granting permits to intermittent plants;
- (iii) to allow for CELs to be granted to old power plants;
- (iv) to eliminate the obligation of CFE SB to purchase power exclusively through public auctions (*subastas*), which guaranteed lowest generation costs;
- (v) to order CRE to revoke self-supply grandfathered permits; and
- (vi) to review the legality and profitability of power purchase agreements (“PPAs”) with independent power producers.

The LIE Reform is currently suspended by Mexican courts as its provisions are deemed to violate the Constitution and international treaties to which Mexico is a party.

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Mariana Herrero has in-depth experience in all aspects of environmental law and approaches environmental issues from different perspectives, often in collaboration with Galicia Abogados, S.C.'s ("GALICIA") Projects, Litigation and M&A practice groups. Mariana has represented Mexican and international companies, mainly from the energy, retail, manufacturing, financial services and infrastructure industries, and has particular expertise in advising intense water consuming industries on the preservation of water rights and designing strategies to ensure compliance with the complex wastewater regulations in Mexico.

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Cecilia Azar specialises in arbitration, mediation and judicial procedures related to alternative means of dispute resolution with more than 25 years' experience. Cecilia focuses her practice on complex domestic and international commercial disputes. Acting as arbitrator, counsel, mediator or expert, she has developed a broad experience, particularly in cases related to energy, infrastructure, construction and commercial mediations. She is recommended by *Who's Who Legal* as both a national and global leader, praised in *Chambers and Partners* for her "analytical skills", and described by *The Legal 500* as a "highly-respected arbitration specialist".

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