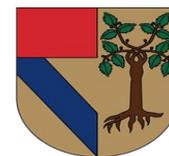




MEXICO UPDATE



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Message from the Co-Chairs

The ABA Mexico Committee presents this issue of the *Mexico Update* with hope in our hearts. This year was punctuated by illness and isolation, along with the untimely passing of our friend Patrick Del Duca. But we hope that this Newsletter, and the spring season, together bring a sense of renewal. Indeed, the number of COVID-19 cases are dropping and the world is getting vaccinated. Some are even planning summer travel and reemerging to connect in-person with loved ones (we may even be able to see one another at in-person conferences soon!). Mexico, too, is facing a fresh federal political landscape, depending on the outcome of the imminent June 6 federal elections.

We hope that this Newsletter provides our readers with a similar sense of hope, renewal, and reemergence—from timely discussions of real estate in Mexico, to reminders of travel and the importance of consulates, and even new nutritional labeling requirements imposed by the Mexican government. Some of the articles are written by talented up-and-coming Mexican law students, themselves giving a fresh face to this Committee, while others come from our seasoned lawyer members on both sides of the border.

Please enjoy the Newsletter, and accept our best for a hopeful spring and summer season.

Message from the Editors

This issue of MEXICO UPDATE addresses a sampling of key issues of Mexican law. We welcome contributions from our readers for the next issue. Although we publish in English, contributions may be submitted in Spanish or English. Our editorial team works to assure that everything is published in well-polished legal English. We can also suggest topics focused on specific judicial decisions or legislative and regulatory developments. Happy reading!

Karla Ruíz, Andres Nieto, Kelsey Quigley, editors

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About the Mexico Committee

Anchored by coordinators in cities in Mexico and the United States, the Mexico Committee has a diverse membership through attraction, rather than promotion. Among the committee's signature activities are: active sponsorship of programs on legal developments in Mexico, the U.S. and other jurisdictions. It includes arbitration, antitrust law, criminal procedure reform, data privacy, environmental law, legal education, secured lending, and trade law. The Committee contributes to the annual *Year In Review* publication. Through a partnership with a leading Mexican law faculty this Committee develops its newsletter, it also maintains a website, and actively organizes programs at the spring and fall meetings in the Section of International Law.

The Mexico Committee's membership is its most important asset. We encourage all Committee members to be involved in Committee activities and to communicate freely their suggestions and ideas.

Do you know?

An international lawyer (not licensed by a US bar) can join the ABA for US\$150, plus the Section of International Law for US\$65, for a total of US\$ 215? The application is available at:

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Mexico Committee Members can access back issues of MEXICO UPDATE from inception through the Mexico Committee webpage library within ABA Connect.



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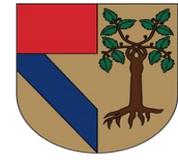
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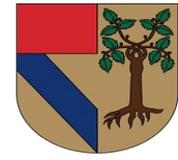
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OBTAINING, MAINTAINING, AND PROTECTING LEGAL TITLE OF REAL ESTATE PROPERTIES IN MEXICO

Struck, Gustavo

Obtaining Legal Title.

The Mexican legal system, like most civil law systems, is very formalistic regarding real estate law; if one does not fully comply with all real estate rules (both material and in form), third parties may successfully challenge legal title to a property. Additionally, even once legal title has been obtained, it can be lost if the owner does not maintain the property ownership in accordance with the applicable Civil Code.¹ Below is a brief description of some of the main issues that arise when acquiring real estate property in Mexico.

- A. **Background of the Property.** It is fundamental to understand the background of the property, its past owners, and any type of liens, easements, encumbrances, or limitations on the property. All of this background information must be recorded in the Public Registry of Property.²
- B. **Agrarian Background.** The Mexican Federal Constitution and the Mexican Agrarian Law, both federal law, require certain formalities before a property can be considered private under the Civil Code, if that property was subject to agrarian use (mostly *ejido*)—Such formalities are material and do not prescribed over time. Therefore, a property that had agrarian background may be challenged at any time by its “agrarian original owners”. To confirm whether a property has an agrarian background, a special search can be conducted in the *Registro Agrario Nacional* “National Agrarian Registry” and before the *Procuraduría Agraria* “Agrarian Bureau”.
- C. **Prescription and Good Faith Transfers.** A property can be acquired by prescription after 5 (five) years if the possession of the property is public and in good faith and after 10 (ten) years if in bad faith.

Furthermore, the Civil Code protects the good faith purchaser, even if the property ownership suffers from legal infirmities with the exception that agrarian matters cannot be cured by a good faith purchase. Accordingly, it is best practice that before every purchase a potential future owner confirms evidence of at least 10 (ten) year possession and at least 2 (two) prior transfer of property.

D. **Public Deed (before Mexican Public Notary).**

All transfers of real estate (and liens on real estate) must be formalized before a Mexican public notary. In order for the transfer to be in full force and enforceable against third parties, the public deed containing the transfer of the property must be recorded in the corresponding Public Registry of Property; this registration is made directly by the corresponding public notary.

E. **Certificate of Existence or Non-Existence of Liens.**

All Public Registries of Property have the ownership title history of each private piece of real estate, along with the existence of any liens, easements, encumbrances, or limitations on the property. In addition to the public deed containing the title of title of the property, it is important that a prospective owner obtain a certificate of existence or non-existence of liens, including the above mentioned information.

Maintaining Legal Title

Once the property has been legally purchased, it is critical to maintain ownership and possession in order to avoid and, in perhaps successfully defend, any claim by a third party. Below are some suggestions for maintain a property in Mexico.

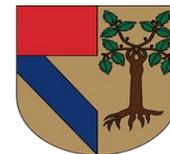
- A. **Possession.** In addition to a clear and formal title, the owners must continue to have possession of the property. Such possession must always be (i) in the capacity as owner (instead of a lease or bailee, if the owner grants the possession to a third party it must

¹ Mexico has a Federal Civil Code and 32 (thirty two) local Civil Codes (one for each state). Real Estate law is local, which varies from state to state.

² Each Public Registry of Property is local by definition. In some cases they are statewide and in other they operate by one or a group of municipalities within a state.



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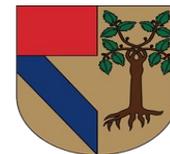
be always documented in a written agreement); (ii) peaceful (maintained without the use of any type of force); (iii) continuous; and (iv) public (evident to all people). Possession is fundamental to evidence the ownership of the property and to defend in from third party claims. In addition, there should be physical evidence that the property is owned, possessed and used; this is especially important when owning a property without any buildings. Property owners should consider fencing the property and/or marketing it with clear signs that the property is owned, possesses, and used.

- B. **Payment of real estate property tax.** Every real estate property is subject to the *impuesto predial* “real estate property tax,” which is a local tax that must be paid by the owner of the property—and no one else. This tax evidences that the person paying the tax (the owner) is the true owner and has possession of the property.
- C. **Certificate of Existence or Non-Existence of Liens.** Finally, all owners of Mexican real estate properties should request and obtain, at least 5 (five) years, a certificate of existence or non-existence of liens. Such a certificate will reflect the registered owner and that there are no unknown liens, easements, encumbrances, or limitations on the property.

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NOTARIAL ATTRIBUTIONS TO MEXICAN CONSULS ABROAD

Espinosa, Mariana

The dictionary of the Royal Spanish Academy defines Consul a person in a foreign country who has been authorized to protect the interests of the citizens of the home country.¹

According to the Mexican Secretary of Foreign Relations, Mexico has more than 50 Consulates in the United States² and 173 Consulates in the rest of the world, totaling 223 Consulates.³

In accordance with article 19 of the Mexican Foreign Service Law, the appointment and removal of Consuls is made by the President of the Mexican Republic. Article 20 of the same law lays out the requirements for consuls: (i) Mexican by birth, with no other nationality, (ii) fully possess their civil and political rights; (iii) over 30 years of age, and (iv) with the necessary merits to carry out their work.

The Consular Office is defined by law as the representation of the Mexican State before the government of other country. There are various types of Consular Offices, which differ according to their importance and scope; the types of Consular Office are: Consular Section, General Consulate, Consulate, Consular Agency, and Honorary Consulate. Regardless of the type, a Consular Office is responsible for protecting the commercial, economic, and cultural and scientific relations between both countries, and issuing necessary documentation to Mexicans and to foreigners.

This piece will focus on the notarial functions of Consulates. These functions include attesting, granting, or revoking powers, preparing open public wills, processing repudiations of inheritance, and granting authorization of parental authority or guardianship. These functions are conducted in accordance with article 85 of the Regulations of the Mexican Foreign Service Law.⁴

The documents granted before the Consuls are legitimate public documents that don't require any other formalities to be valid in Mexican Territory.

One of the most frequent notarial acts granted before a Consul is the power of attorney, a document by which a person becomes authorized to carry out various administrative and legal procedures on behalf of another. Any person or company—whether Mexican or foreign—can grant power of attorney before a Mexican Consul, and that power of attorney will be valid in Mexico.

Therefore, Consul has material competence as long as it takes effect in Mexico, its activity being subject to the Mexican Federal Civil Code and the Notarial Law.⁵

It is also possible to grant powers of attorney before a local authority in a foreign country, but for these powers to take effect in Mexican territory, they must be “apostilled” or “legalized” and, where appropriate, the underlying documents must be translated into Spanish. Additionally, the documents must be notarized before a Mexican Notary Public, in accordance with the provisions of Article 140 of the Law of Notaries for the Federal District. However, this precept does not apply to the powers granted before the Mexican Consul.⁶

Currently, due to the public health emergency cause by Covid-19⁷, the mobility of people from country to another has been made difficult. Therefore, it is highly probable that Mexicans or foreigners living outside the national territory require legal advice, which is why it is vital for those Mexicans abroad to know the location of their closest Consular Office, along with the legal acts that a Consul can perform—including those notarial acts described in this article.

⁵ Cárdenas González, Fernando Antonio. *Mandatos y poderes*, tercera edición, Editorial Porrúa, México 2015 p.197

⁶ <https://www.gob.mx/sre/acciones-y-programas/tramite-de-poderes-notariales#:~:text=Son%20los%20poderes%20notariales%20que,ser%20traducidos%20al%20idioma%20espa%C3%B1ol> may 7, 2021.

⁷ <https://www.who.int/features/qa/39/es/> Legally binding international agreement signed by 196 countries, including all the Member States of the World Health Organization (WHO).

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¹ <https://dle.rae.es/c%C3%B3nsul>, may 6, 2021

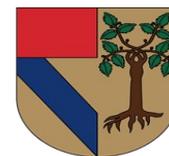
² <https://www.gob.mx/sre/articulos/mexico-tiene-la-red-consular-mas-grande-del-mundo?idiom=es> may 7, 2021

³ https://www.embassypages.com/mexico_es may 7, 2021

⁴ <https://www.ordenjuridico.gob.mx/Documentos/Federal/pdf/wo88454.pdf> may 7, 2021



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ECONOMIC AND ENVIRONMENTAL CONSIDERATIONS IN LIGHT OF MEXICO'S REFORM TO THE ELECTRIC POWER INDUSTRY LAW

*Del Carmen Duarte, Luisa Renata
Lamas Bernal, Andrea Cointa*

Background. Before August 2014, the electric power industry in Mexico had several deficiencies. The energy rate was 25% more expensive than that in the United States, even with government subsidy and incentives.¹ This was, in part, because of the high dependency on fuel prices and the fact that Mexico imported nearly 30% of its natural gas.

In August 2014, a new Electric Power Industry Law was enacted.² The main goals of the new law were to strengthen state-owned companies, such as the Federal Electricity Commission³ (CFE), to reduce costs in electricity production, to promote foreign investment, and to move towards sustainable development derived from clean energy.⁴

With the entrance of President López Obrador's administration, the Electric Power Industry Law was reformed.⁵ The president filed before the Congress a bill to amend the law on February 24, 2021, and a week later it was approved by the Senate.⁶

Before the amendments, both private and state-owned companies participated in auctions to sell their electric energy to CFE. However, with the amendments, companies are no longer obliged to buy electricity through auctions⁷, they can now purchase power directly from the generators.

In addition, the amended law gives priority to CFE plants. As of today, the preference for delivery of energy proceeds in the following order:⁸

1. Hydroelectric plants, mostly CFE owned.
2. Fossil fuel energy (gas, coal, fuel oil) and geothermal and nuclear energy.
3. Wind and solar energy, mostly owned by private companies.
4. Combined cycle and other technologies owned by private companies.

In addition, required delivery commitments further favor hydroelectric and fossil fuel generators. This is because Power Purchase Agreements require certain minimum levels of energy delivery, which only CFE *Suministrador de Servicios Básicos* (SSB)⁹, fossil fuel, and hydroelectric power generators can provide—as they can easily predict their energy production.¹⁰ As a result, other energy providers are at a disadvantage. The goal that this reform pursues is clear: to strengthen the structure and control that CFE has over the energy sector. However, the reform has been criticized due to its environmental and economic implications.

¹México Gobierno de la República, Reforma Energética: Resumen Ejecutivo, p. 8, available at: https://www.gob.mx/cms/uploads/attachment/file/164370/Resumen_de_la_explicacion_de_la_Reforma_Energetica11_1_.pdf, accessed 01 April 2021.

²*Ley de la Industria Eléctrica*, published in *Diario Oficial de la Federación (DOF)*, 11 August 2014.

³*Comisión Federal de Electricidad*.

⁴México Gobierno de la República, Reforma Energética: Resumen Ejecutivo, *op. cit.* p. 23.

⁵*Decreto por el que se reforman y adicionan diversas disposiciones de la Ley de la Industria Eléctrica*, published in *DOF* 09 March 2021, available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5613245&fecha=09/03/2021, accessed 14 April 2021.

⁶Senado de la República, Coordinación de Comunicación Social, “Aprueba el Senado, en lo general, reforma a la Ley de la Industria Eléctrica”, *Boletín*, available at: <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/50414-aprueba-el-senado-en-lo-general-reforma-a-la-ley-de-la-industria-electrica.html>, accessed 01 April 2021.

⁷Daen, Arturo, “Reforma eléctrica de AMLO: ¿qué quiere el presidente y cuáles son las alertas ante la iniciativa?”, *Animal Político*, <https://www.animalpolitico.com/elsabueso/reforma-electrica-amlo-cfe-costos-alertas/>, accessed 15 April 2020.

⁸ Order as established in the considerations given by Senado de la República, Dictamen de las Comisiones Unidas de Energía; de Medio Ambiente, Recursos Naturales y Cambio Climático; y de Estudios Legislativos segunda, respecto de la minuta con proyecto de decreto por el que se reforman y adicionan diversas disposiciones de la Ley de la Industria Eléctrica, México, 2021, pp. 24-25, available at: https://infosen.senado.gob.mx/sgsp/gaceta/64/3/2021-03-02-1/assets/documentos/Dictamen_Reforma_y_Adicion_LIE.pdf, accessed 15 April 2021; see also Cabrera C., Orlando *et al.*, “An overview of the impact of Mexico's new Electric Power Industry Law on foreign investors operating in the power sector in Mexico”, *LinkedIn.com*, available at: https://www.linkedin.com/posts/orlandocabrera_mexicos-electric-power-industry-law-investment-ugcPost-6783434007624368128-IKGt/, accessed 15 April 2021.

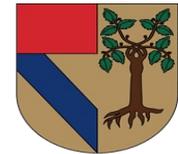
⁹ Branch of CFE, in charge of providing the “Basic Supply” as defined by the Electric Power Industry Law.

¹⁰ Cabrera C., Orlando, *et al.*, *idem*.

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The private sector even pursued –successfully— a suspension of the law because of the human rights possible violations, including those recognized in articles 4 and 28 of the Mexican Constitution. Article 4 provides that the Mexican society is entitled to a clean and healthy environment. Article 28 requires the elimination of barriers to free commerce and competition, even within the energy sector.

Economic and Legal Criticism. The Federal Economic Competition Commission¹¹ (COFECE), an autonomous government agency, signaled that the reform contravenes articles 25, 27 and 28 of the Mexican Constitution, and affects COFECE’s sphere of competence by preventing it to guarantee free competition and concurrence in the energy sector.¹² These principles allow users to receive quality goods or services at the best possible price.¹³ The modification disadvantages clean and renewable energy competitors.¹⁴ The amended law also threatens foreign investors, as they will be at risk of paying higher tariffs.¹⁵

Moreover, the amendments could be considered an indirect expropriation of private company investment in Mexico. Indirect expropriation occurs when a local administrative or legislative measure deprives the owner of an investment’s benefits.¹⁶ Here, under the new regime, energy investment predating President López Obrador’s reform could lose value.¹⁷ If these losses are significant, investors may be entitled to initiate a claim for unlawful expropriation under international law.¹⁸

In addition, the reform does not comply with several international obligations set forth in investment and commercial treaties, such as the Agreement between the United States of America, the United Mexican States, and Canada (T-MEC) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Articles 14.4¹⁹ and 14.6²⁰ of the T-MEC require Mexico to extend to foreign investors a treatment not less favorable than that it would give to its own investors, as well as a minimum standard of treatment. The amended energy law violates these rules since it grants CFE plants a more favorable treatment for electric power dispatch²¹ over the renewable energy sector, which is mostly foreign investment. Indeed, investment tribunals have held in favor of private interests where investors’ legitimate expectations are frustrated.²² Here, a breach of Article 14.6 of the T-MEC could give rise to an investment or commercial arbitration.

The reform also violates Chapter 22 of the T-MECC, which prohibits governments from favoring state-owned enterprises.²³ In the case at hand, a tribunal could find that Mexico breached these T-MECC obligations, not only by denying an equal treatment to foreign investors, but also by favoring CFE, a state-owned enterprise.²⁴

¹¹ *Comisión Federal de Competencia Económica*.

¹² *Comisión Federal de Competencia Económica*, “COFECE interpone controversia constitucional contra el Decreto que reforma diversas disposiciones de la Ley de la Industria Eléctrica”, Ciudad de México, 22 April 2021, available at: <https://www.cofece.mx/cofece-interpone-controversia-constitucional-contra-el-decreto-que-reforma-diversas-disposiciones-de-la-ley-de-la-industria-electrica/>, accessed 29 April 2021.

¹³ Gaona López, Ramses, “Una reforma cara y con olor a humo”, *El Informador*, 7 March 2021.

¹⁴ Daen, Arturo, *op. cit.*; Cabera C., Orlando, *et al.*, *idem*, p. 2.

¹⁵ Reuters, “Senado aprueba reforma eléctrica de AMLO”, *El Economista*, 15 April 2021, available at: <https://www.economista.com.mx/politica/Senadores-aprueban-en-lo-general-y-sin-cambios-la-reforma-a-la-Ley-de-la-Industria-Elctrica--20210302-0139.html>, accessed 29 March 2021.

¹⁶ Cabera C., Orlando, *et al.*, *op. cit.*, p. 3.

¹⁷ García, Karol, “Jurídicamente, la reforma eléctrica es una expropiación: Hogan Lovells”, *El Economista*, 26 February 2021, available at: <https://www.economista.com.mx/empresas/Juridicamente-la-reforma-electrica-es-una-expropiacion-Hogan-Lovells-20210226-0011.html>, accessed 12 April 2021.

¹⁸ Cabera C., Orlando, *et al.*, *op. cit.*, p. 3; see also *PMI v Uruguay ICSID Case No 20/7*, Award 8 July 2016, para. 286, available at: <https://jusmundi.com/en/document/decision/en-philip-morris-brand-sarl-switzerland-philip-morris-products-s-a-switzerland-and-abal-hermanos-s-a-uruguay-v-oriental-republic-of-uruguay-award-friday-8th-july-2016>, accessed 15 April 2021; *LG&E Energy Corp & others v. Argentina, ICSID Case No. Arb 02/01*, para. 193, available at: <https://www.italaw.com/sites/default/files/case-documents/ita0460.pdf>, accessed 15 April 2021.

¹⁹ Also found in Article 9.5 CTPP.

²⁰ Also found in Article 9.6 CTPP.

²¹ Cabera C., Orlando, *et al.*, *op. cit.*, p. 3.

²² Cabera C., Orlando, *et al.*, *idem.*; *Cervin Investissements S.A. y Rhone Investissements S.A. c. Costa Rica*, Caso CIADI No. ARB/13/2, Laudo final, March 2017, paras. 464-468, available at: <https://www.italaw.com/sites/default/files/case-documents/italaw9215.pdf>, accessed 15 April 2021.

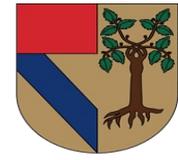
²³ Chapter 22 T-MEC; see also Forbes Staff, “La reforma eléctrica de AMLO complica el consenso del T-MEC”, *Forbes*, 21 March 2021, available at: <https://www.forbes.com.mx/politica-reforma-electrica-amlo-complica-consenso-t-mec/>, accessed 15 April 2021.

²⁴ Cabera C., Orlando, *et al.*, *op. cit.*, p. 3.

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Environmental Criticism. Furthermore, the environmental cost of the reform is substantial. Back in 2014, the Electric Industry Law pursued greater production of clean energy by adhering to certain sustainable development plans.²⁵ However, the recent reform changes two main aspects related to the environment: power dispatch order and clean energy certificates.²⁶

Regarding the dispatch order, CFE is supposed to rely first on hydroelectric power. However, hydroelectric energy can only be generated intermittently, so hydroelectric production will not be able to fully cover the demand. This paves the way for the next option—fossil fuel energy, the most polluting type of energy production.²⁷

And even the first choice, hydroelectric energy, might not be a clean source of energy due to the environmental impact it entails, such as change in the ecosystems that surround dams and reservoirs and greenhouse gas emissions.²⁸ Furthermore, hydroelectric infrastructure's technology was built in the late 90's and is now outdated and not sustainable.

And as for the clean energy certificates, the original law—before amendment—required companies aspiring to do business with CFE to have a percentage of their energy produced by certified clean energy producers. This provision was aimed at attracting foreign investment, encouraging technological innovation, and reducing environmental impact. Today, the reform permits clean energy certificates to “not only eligible ‘new’ power plants, but also to ‘old’ power plants, which could lead to distortion of the market, plunging down the prices of Clean Energy Certificates”²⁹.

²⁵Ley de la Industria Eléctrica 2014, *op cit*.

²⁶Decreto por el que se reforman y adicionan diversas disposiciones de la Ley de la Industria Eléctrica, *op cit*; see also Senado de la República, Dictamen de las Comisiones Unidas de Energía; de Medio Ambiente, Recursos Naturales y Cambio Climático; y de Estudios Legislativos segunda, *op cit* pp. 24-25.

²⁷García, Karol, *op. cit.*; see also Daen Arturo, *op cit*.

²⁸Courmoyer, Caroline, "Is Hydropower a Renewable Energy or not?", *Governing*, 2013, available at: <https://www.governing.com/archive/gov-hydropower-renewable-energy.html#:~:text=The%20water%20itself%20is%20not,%20not%20considered%20renewable%20by%20everyone>, accessed 31 May 2021; McEntee, Fergal, "How green is hydropower?", *Sustain Europe*, available at: <https://www.sustaineurope.com/how-green-is-hydropower-20180229.html>, accessed 31 May 2021.

²⁹Cabrera C., Orlando, *et. al.*, *op. cit.* p. 2.

In other words, the incentive to invest in technology is gone, and with it, the opportunity to have better mechanisms for clean energy production.

Together, these provisions constitute a violation of Article 4 of the Mexican Constitution, which provides for a clean and healthy environment for society's development. According to the Mexican Supreme Court, this right covers the relation between humans and the earth, and guarantees the exercise of other rights such as health and life.³⁰ A report³¹ by Universidad Autónoma Metropolitana (UAM) Professor Hernández-Moreno described that the pollution created by the thermoelectric plant in Tula would be responsible for 14,000 premature deaths annually in the Mexico City Metropolitan Area.³²

In conclusion, the reform to the Electric Industry Law may have profound environmental and economic impacts that would seem to supersede the possible benefits of strengthening the structure and control of CFE. In enacting these amendments, Mexico is likely violating environmental and commercial obligations set forth in the Mexico Constitution and in international treaties.

³⁰DERECHO HUMANO A UN MEDIO AMBIENTE SANO. LA VULNERACIÓN A CUALQUIERA DE SUS DOS DIMENSIONES CONSTITUYE UNA VIOLACIÓN A AQUEL, Primera Sala, Tesis: 1a. CCLXXXVIII/2018 (10a.), available at: <https://sjf2.scjn.gob.mx/detalle/tesis/2018633>, accessed 01 May 2021.

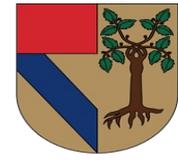
³¹Hernández-Moreno, Adolfo, "Modelado de impactos transcuencia en escenarios de cambio de combustible para la generación de energía. Estudio de caso Termoeléctrica Francisco Pérez Ríos", apud. Ruiz Esparza Ortega, Ricardo, "Denuncian Organizaciones de la Sociedad Civil graves consecuencias de la 'Ley Combustóleo'", *Centro Mexicano de Derecho Ambiental*, 2021, available at: <https://www.cemda.org.mx/denuncian-organizaciones-de-la-sociedad-civil-graves-consecuencias-de-la-ley-combustoleo/>, accessed 01 May 2021; Iniciativa Climática de México, "Estudio sobre la influencia de la central termoeléctrica de Tula, Hidalgo, en la calidad del aire regional", February 2021, p. 7, available at: <http://www.iniciativaclimatica.org/wp-content/uploads/2021/03/Central-Termoele%CC%81ctrica-Tula.pdf>, accessed 31 May 2021.

³²Zona Metropolitana del Valle de México

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LABELING AND THE ENACTMENT OF NOM-051-SCFI/SSA1-2010

Sabljak, Laura

On November 8, 2019, the reform of the General Health Law¹ was published in the Official Gazette of the Federation, announcing changes to provisions for the labeling of food and non-alcoholic beverages. Per the terms of this Decree, the Federal Executive Power issued regulatory provisions directed at improving labeling food and non-alcoholic beverages on July 31, 2020. On this day, the Official Mexican Standard *NOM-051-SCFI/SSA1-2010* was published in the Official Gazette of the Federation, and officially announced provisions for general labeling characteristics for prepackaged food and non-alcoholic beverages, as well as commercial and health information.

With this step, Mexico followed in the footsteps of Chile. Back in 2016, Chile enacted the Food and Beverage Warning Labeling Law, which required producers and marketers to affix labels on packages of foods and beverages high in sugar, saturated fat, sodium, or calories; at the same time, the law also forbade placing animals, figures, or colors that would attract the attention of children on those same products.²

Mexico went even further than Chile. The new Mexican regulation now prohibits the use of child-targeted figures, cartoons, celebrities, athletes, or pets in product packaging, with the aim of preventing attracting the interest of children under 14 years of age. In addition, junk food packaging may not include prizes, toys, or other gifts in junk food, given the concern that children might end up associating consuming this type of unhealthy food with a reward.³

Specifically, the Mexican reform requires the following:

- A. Food and non-alcoholic beverages must include nutritional information that is easy to understand, truthful, direct, simple, and visible.
- B. A warning if a certain product exceeds the maximum daily limits of energy content due to excessive sugars, saturated fats, and sodium.

C. The aim for food programs to promote nutritious food and consider the nutritional needs of the population.

D. Empowerment of the Ministry of Health to include legends or pictograms on food packaging or wrappers if deemed necessary.

This law also applies to food importers, since all foods produced abroad that fall within the category of processed foods and non-alcoholic beverages must also comply with these regulations in Mexican territory.

This federal strategy is projected to reduce 1.3 million new cases of obesity, providing for a 14.7% reduction in the prevalence of these conditions and the chronic-degenerative diseases that they cause.⁴ Current indicators show that Mexico ranks second in terms of obesity rates, attributed mostly to poor diet, food industrialization, a sedentary lifestyle and lack of physical exercise.⁵

In 2017, diabetes *mellitus* ranked among the top three causes of death in Mexico,⁶ and eight out of ten people die in the country from chronic-degenerative diseases derived from obesity.⁷

⁴ÁLVAREZ DEL CASTILLO G., Carlos, “Prevén reducir obesidad con el nuevo etiquetado de productos”, *El Informador*, Guadalajara, 26/ago/2020, p. 2-A.

⁵ORTEGA, Iván, “Gran problema de salud en México”, *El Occidental*, Guadalajara, 6/nov/2019, p. 30.

⁶National Institute of Statistics and Geography, “Características de las defunciones registradas en México en 2017”, 2018, Consulted in <https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2018/EstSociodemo/DEFUNCIONES2017.pdf> on May 13, 2021, p. 1.

⁷Senate of the Republic, “Respalda Senado etiquetado en alimentos para advertir alto contenido energético, grasas o nutrientes críticos”, October 22 of 2019, Consulted in <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/46541-respalda-senado-etiquetado-en-alimentos-para-advertir-alto-contenido-energetico-grasas-o-nutrientes-criticos.html> on May 13, 2021.

¹Published in the Official Gazette of the Federation the 7th of February of 1984.

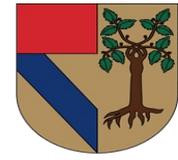
²CHÁVEZ BRAVO, Cristóbal, “Ley de Etiquetado de Chile se ha transformado en modelo mundial alimentario”, *Xinhua Español*, Santiago de Chile, 27/jun/2019, Consulted in <https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2018/EstSociodemo/DEFUNCIONES2017.pdf> on May 13, 2021.

³Ministry of Health, “Encuesta Nacional de Salud y Nutrición de Medio Camino 2016”, Mexico, 2016, Consulted in <https://www.gob.mx/cms/uploads/attachment/file/209093/ENSANUT.pdf> on May 13, 2021, p. 70.

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In addition, it is estimated that \$1.8 billion American dollars will be saved in healthcare costs during the five years after the implementation of this measure. This consists of approximately \$1.1 billion directly linked to healthcare expenses, with the remaining savings linked to a decrease in indirect costs for disability and caregiving expenses, among others.⁸

Experts in the healthcare and nutrition field have argued that the new labeling may help inform consumers so they can decide which are the best foods. However, many people do not know how to interpret the nutritional information, so, for full effectiveness, the information should be accompanied by a national education campaign and consultations with nutritionists.

The reform may have some downsides. The labels might cause people to avoid eating certain foods that are high-in-calories, but are nutritious. And in the case of non-sugar sweeteners (sugar substitutes suitable for consumption by diabetics), which receive a special label that seeks to inhibit their consumption in minors, people may not understand that authorized sweeteners are generally seen as safe.

One of the main goals of the reform of the General Health Law,⁹ however, was for the labeling to be easily understood by the general public. Indeed, according to one study, “30.5% of the population reports that nutritional labeling is somewhat incomprehensible”.¹⁰

But perhaps the most emblematic part of this reform was the establishment of the famous seals to be placed on junk food, which read as follows: “*excess calories, excess sodium, excess trans-fat, excess sugar, excess saturated fat, contains sweeteners, not recommended in children, contains caffeine, avoid in children.*”

⁸ÁLVAREZ DEL CASTILLO G., Carlos, *op. cit.*, p. 2-A.

⁹Article 212 (...) Labels or counter labels for food and non-alcoholic beverages must include nutritional information that is easy to understand, truthful, direct, simple and visible. In addition to the provisions of the previous paragraph, the frontal warning labeling must be done separately and independently of the declaration of ingredients and nutritional information, other critical nutrients and ingredients established by the competent regulatory provisions. The Ministry of Health may order the inclusion of legends or pictograms when it deems it necessary (...)

Article 213. the containers and packaging of the products referred to in this title must comply with the specifications established by the applicable provisions.

Article 214. The Ministry of Health will publish in the Official Gazette of the Federation the official Mexican standards that it may issue (...) (*own translation*).

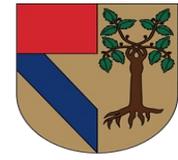
¹⁰Ministry of Health, *op. cit.*, p.11

Overall, these standards may be an aid for consumers in understanding nutritional qualities of food and non-alcoholic beverages, but the reform must be evaluated after its entry into force and its effect on consumption of certain foods and beverages. For example, these labels might turn out to be useless if people do not know what an excess of sugars, trans fats, saturated fats, sodium, or calories produces in the human body. Therefore, including this labeling without first having a solid foundation in food education on which to rely, may not have the desired effect. For now, this reform is an innovative measure undertaken at a national level; however, the next step must be education.

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THE BIDEN ADMINISTRATION: WHAT TO EXPECT FROM A CHANGING US-MEXICO RELATIONSHIP

Hannah Gelbort, John Walsh, David Ross, Lauren Mandell, Heidi K. Ruckriegle, Kelsey Quigley

Major shifts in the relationship between the United States and Mexico have occurred since President Joe Biden took office in January 2021. President Biden has taken steps to reverse several key Mexico-related policies of the Trump Administration, and Mexico is in a state of flux under the presidency of Andrés Manuel López Obrador. How these shifts continue for each country remains to be seen—especially with the looming June 6, 2021 midterm elections in Mexico, which will be closely followed by a visit from US Vice President Kamala Harris.¹ The US-Mexico relationship is strong, but also faces new hurdles, including new migration challenges, López Obrador's continue populist agenda, and the ongoing global pandemic.

Immigration.

On January 23, 2021, Biden and López Obrador held their first presidential phone call, during which they covered immigration, the COVID-19 pandemic and investment in Latin America. Biden promised \$4 billion to further develop Honduras, El Salvador, and Guatemala to address the root causes of unlawful immigration.² On March 1, 2021, the two leaders met again by video and expressed their shared “commit[ment] to immigration policies that recognize the dignity of migrants and the imperative of orderly, safe, and regular migration.”³ Complicating the situation is a record influx of unaccompanied minors crossing the US-Mexico border;

Biden has largely refused to expel them, instead working to increase capacity in shelters and to place children with family members within the United States.⁴ His administration has also reached agreements with Mexico, Honduras, and Guatemala to tighten their own borders and placed radio spots throughout Central America discouraging would-be immigrants from making the journey to the United States.⁵

Rule of Law

López Obrador campaigned on promises of radical transformation in Mexico and attacked perceived political corruption. Since taking office, he has taken controversial steps that have led to concerns about the rule of law in Mexico. Among other actions, his administration has worked to delegitimize attorneys practicing tax law and to discourage individuals under tax investigation from consulting attorneys.⁶ More recently, López Obrador has commented that it was a “disgrace” that Mexican lawyers work for foreign companies, portraying their work as “treason against their nation.”⁷

⁴Nick Miroff and Maria Sacchetti, “Migrant teens and children have challenged three administrations, but Biden faces rush with no precedent,” *Washington Post*, Mar. 22, 2021, <https://www.washingtonpost.com/nation/2021/03/22/unaccompanied-minors-immigration-obama-trump-biden/>; Claire Hansen, “Biden Defends Administration on Immigration, Promises to Improve System,” *U.S. News*, Mar. 25, 2021, <https://www.usnews.com/news/national-news/articles/2021-03-25/biden-defends-administration-on-immigration-promises-to-improve-system>; “What is Biden doing differently at US border?,” *BBC*, May 14, 2021, <https://www.bbc.com/news/world-us-canada-56255613>. But see Julian Resendiz, “Biden Administration Hasn’t Stopped Expelling Unaccompanied Mexican Children,” *Border Report*, May 4, 2021, <https://www.borderreport.com/hot-topics/immigration/report-biden-administration-deported-hundreds-of-unaccompanied-children-to-mexico/> (describing that U.S. authorities turned over 539 Mexican unaccompanied minors to Mexican officials in the first three months of 2021).

⁵Priscilla Alvarez, “Biden admin secures agreements with Mexico, Honduras and Guatemala to secure borders, officials say,” *CNN*, Apr. 12, 2021, <https://www.cnn.com/2021/04/12/politics/biden-agreement-mexico-honduras-guatemala/index.html>.

⁶Daina Beth Solomon, “Mexican tax campaign threatens rule of law, international attorneys say,” *Reuters*, Sep. 19, 2020, <https://www.reuters.com/article/mexico-taxes-idINKBN26A0B6>.

⁷José Luis Álvarez, “Asociaciones de abogados responden a AMLO: el Estado de derecho no es traición a la patria,” *el Contribuyente*, Feb. 24, 2021, <https://www.elcontribuyente.mx/2021/02/asociaciones-de-abogados-responden-a-amlo-el-estado-de-derecho-no-es-traicion-a-la-patria/>.

¹Francesco Manetto, US-Mexico Tensions Rise Ahead of Kamala Harris Visit, *El Pais*, May 24, 2021, <https://english.elpais.com/usa/2021-05-24/us-mexico-tensions-rise-ahead-of-kamala-harris-visit.html>.

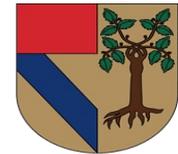
²Mark Stevenson, Rob Gillies and Aamer Madhani, “Mexican leader says Biden offers \$4B for Central America,” *Associated Press*, Jan. 23, 2021, <https://apnews.com/article/joe-biden-north-america-mexico-justin-trudeau-coronavirus-pandemic-070159520dd892ad0f4233cfc7e2827>.

³US-Mexico Joint Declaration, The White House Briefing Room, Mar. 1, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/01/us-mexico-joint-declaration/>.

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In October 2020, the Editorial Board of the *Financial Times* opined that López Obrador “is revealing himself as an authoritarian populist” through his attacks on Mexico’s independent electoral authority, targeting of journalists and planning a referendum on whether to allow the prosecution of his political predecessors.⁸ On October 20, 2020, the American Bar Association (with the support of this Committee) published an open letter to López Obrador expressing concerns about the rule of law under his administration.⁹

US-Mexico Trade and Energy Reform

During the Trump Administration, the United States and Mexico negotiated and signed the United States-Mexico-Canada Agreement (USMCA) to replace the North American Free Trade Agreement. The USMCA entered into force in summer 2020, introducing new rules regarding the automotive trade, the protection of labor and the environment, intellectual property rights, and the resolution of investment disputes, amongst other areas. Notably, Biden supported the signing of the USMCA.¹⁰

Over the last several months, López Obrador’s hostility to private enterprise in the energy sector has generated controversy. He has attempted to return Mexico to reliance on state-run oil and power conglomerates, Petroleos Mexicanos (PEMEX) and Comisión Federal de Electricidad (CFE), respectively. Take the renewable sector, for example. On March 10, 2021, new legislation bickered by López Obrador’s administration that favors CFE over private renewable energy suppliers went into effect.¹¹ Several companies promptly challenged this new Electricity Industry Law as unconstitutional and Mexican courts enjoined application of the law for at least the course of litigation.¹²

In response, López Obrador called for an investigation of the judge issuing the first injunction, and threatened to amend Mexico’s constitution to permit the Electricity Law.¹³ Despite these statements, on March 21, the Secretariat of Energy announced that it would suspend the law’s implementation during the injunction.¹⁴ If the new law does eventually take effect, the energy reform may lead to high-stake investor-state disputes under the USMCA. The outcome of Mexico’s impending June 6, 2021 midterm legislative elections may impact the feasibility of López Obrador’s agenda, including determining whether he has the legislative numbers to amend the constitution.¹⁵

COVID-19

The final pressing challenge facing Biden and López Obrador is to combat the spread and effects of COVID-19. Mexico has experienced significant delays in receiving both the Pfizer and AstraZeneca vaccines that it attempted to procure.¹⁶

¹³David Alire Garcia, “Mexican President Seeks Inquiry into Judge who Halted Power Sector Reform,” *Reuters*, Mar. 15, 2021, <https://www.reuters.com/article/us-mexico-electricity/mexican-president-seeks-inquiry-into-judge-who-halted-power-sector-reform-idUSKBN2B71V8>; “Mexico President Threatens Constitutional Change if Power Bill Struck Down,” *Reuters*, Mar. 21, 2021, <https://www.reuters.com/article/us-mexico-energy-electricity/mexico-president-threatens-constitutional-change-if-power-bill-struck-down-idUSKBN2B924R>.

¹⁴“Si reforma eléctrica es inconstitucional, cambiamos la Constitución: AMLO,” *Forbes Mexico*, Mar. 17, 2021, <https://www.forbes.com.mx/reforma-electroca-inconstitucional-cambiamos-constitucion-amlo/>; Karol García, “Secretaría de Energía cumple con suspensiones a la reforma eléctrica de AMLO,” *El Economista*, Mar. 21, 2021, <https://www.economista.com.mx/empresas/Secretaria-de-Energia-se-echa-para-atras-en-reforma-electrica-20210321-0013.html>.

¹⁵Michael O’Boyle, “Mexico’s AMLO Affirms Power With Legislative Blitz Ahead of Vote,” *Bloomberg*, Apr. 29, 2021, <https://www.bloomberg.com/news/articles/2021-04-29/mexico-s-amlo-affirms-power-with-legislative-blitz-ahead-of-vote>

¹⁶Mexico may delay second doses of COVID-19 vaccine, allows private orders,” *Reuters*, Jan. 22, 2021, <https://www.reuters.com/article/health-coronavirus-mexico-vaccine/update-1-mexico-may-delay-second-pfizer-vaccine-doses-allows-private-orders-idUSL1N2JX157>; “Mexico expects US to send 5m more Covid vaccine doses, president says,” *The Guardian*, May 1, 2021, <https://www.theguardian.com/world/2021/may/01/mexico-astrazeneca-covid-vaccine-us-aid>.

⁸“López Obrador becomes Latin America’s new strongman,” *Financial Times*, Oct. 4, 2020, <https://www.ft.com/content/ae1f61d8-d421-4b70-97a1-891a5e9d34b1>.

⁹Patricia Lee Refo, ABA President, Letter to President López Obrador regarding “Respect for the Rule of Law and the right to legal representation,” Oct. 20, 2020, https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/Rule-of-Law%20letter-Mexico-10-20-20.pdf?logActivity=true; <https://www.msn.com/en-us/news/world/mexico-denies-threatening-criminal-charges-to-boost-tax-take/ar-BB1alaQi>.

¹⁰Vice President Kamala Harris, however, voted against the USMCA in her former capacity as a US Senator. NAFTA/USMCA, *Politico*, Jan. 21, 2020, <https://www.politico.com/2020-election/candidates-views-on-the-issues/trade/nafta-usmca/>.

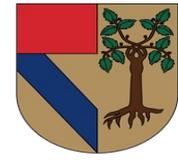
¹¹Anthony Harrup and Juan Montes, “Mexican Lawmakers Pass Bill to Favor State Power Utility,” *Wall Street Journal*, Feb. 23, 2021, <https://www.wsj.com/articles/mexicos-lower-house-of-congress-passes-bill-that-favors-state-electric-company-11614125696>.

¹²Anthony Harrup and Juan Montes, “Mexican Lawmakers Pass Bill to Favor State Power Utility,” *Wall Street Journal*, Feb. 23, 2021, <https://www.wsj.com/articles/mexicos-lower-house-of-congress-passes-bill-that-favors-state-electric-company-11614125696>.

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López Obrador responded by authorizing private companies to purchase any available vaccine directly. Mexico has also sought to acquire 24 million doses of Russia's Sputnik V vaccine, following in Argentina's footsteps, but many of those doses have also been delayed.¹⁷ After originally announcing that it would not loan vaccines to Mexico, the Biden Administration sent Mexico 2.7 million doses of the AstraZeneca vaccine in March 2021; in May López Obrador announced that he expected the United States to send millions more doses of vaccines, and by late May this process had already begun.¹⁸

In sum, the combination of these ongoing critical issues, including evolving immigration policy, trade tensions, the approaching Mexican legislative elections, and the ongoing pandemic and roll-out of vaccines, ensures that the relationship between the United States and Mexico will be front and center for policymakers on both sides of the border.

¹⁷Russia to supply Mexico with 24 million COVID-19 vaccines, president says," *Reuters*, Jan. 25, 2021, <https://www.reuters.com/article/health-coronavirus-mexico-russia/update-1-mexicos-president-thanks-putin-for-vaccine-shipments-idUSL1N2K01CU>.

¹⁸"Mexico expects US to send 5m more Covid vaccine doses, president says," *The Guardian*, May 1, 2021, <https://www.theguardian.com/world/2021/may/01/mexico-astrazeneca-covid-vaccine-us-aid>; Frank Daniel, "Millions of AstraZeneca Doses Head to Mexico Under Latin America Plan," *Reuters*, May 21, 2021, <https://www.reuters.com/world/americas/argentina-sending-mexico-material-4-mln-astrazeneca-doses-2021-05-21/>.



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