International
Comparative
Legal Guides

Renewable Energy 2021

A practical cross-border insight into renewable energy law

First Edition

Featuring contributions from:

Bracewell (UK) LLP
Cliffe Dekker Hofmeyr Inc (CDH)
Dentons & Co.
Doulah & Doulah
DS Avocats
European Investment Bank
Gómez-Acebo & Pombo Abogados
Gonzalez Calvillo
Jones Day
Mazghouny & Co
Nishimura & Asahi
Pillsbury Winthrop Shaw Pittman LLP
POSSER SPIETH WOLFERS & PARTNERS
The Law Firm of Wael A. Alissa in association with Dentons & Co.
UMBRA – Strategic Legal Solutions
Wintertons

ICLG.com

Expert Chapters

Q&A Chapters

Mexico


Jorge Cervantes


Hernando Becerra


Pedro Lladó Camarillo

Gonzalez Calvillo

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?

Clean energy is defined under the Electricity Industry Law (LIE) as the energy sources and electricity generation processes with emissions or waste below the thresholds set forth under the applicable regulations. Sources of clean energy include, among others:

- Wind.
- Solar radiation, in all its forms.
- Ocean energy, including (i) tidal, (ii) thermal, (iii) waves, (iv) sea currents, and (v) salinity gradient.
- Geothermal reservoirs.
- Bioenergy sources, as determined by the Law for the Promotion and Development of Bioenergy.
- Hydropower.
- Nuclear power.
- Efficient cogeneration plants that meet the efficiency and emissions thresholds set forth by the Energy Regulatory Commission (CRE) and the Ministry of Environment (SEMARNAT), respectively.
- Thermal power plants that meet the minimum efficiency and emissions thresholds set forth by the requirement set by CRE and the emissions criteria established by SEMARNAT.
- Technologies considered as low-carbon technologies under international standards.
- Other technologies, as determined by the Ministry of Energy (SENER) and SEMARNAT, based on the parameters and standards for energy and water efficiency, emissions and waste generation, direct or indirect, or life-cycle analysis.

On the other hand, the Energy Transition Law (LTE) defines renewable energy as those types of energy that meet the following criteria: (i) their base resources reside in natural phenomena, processes or materials susceptible to being transformed into energy for human consumption; (ii) their base resources naturally regenerate so they are available either continuously or periodically; and (iii) when generated, they do not release any polluting agents.

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

As a result of the energy reform of 2013 (Energy Reform), by which the Mexican Constitution was amended to open most of the energy industry to private investment, private participation in the renewable sector has considerably increased in the past few years. However, considering that, until 2013, the State maintained a monopoly over the energy industry, including power supply, to this day (August 2020), the State-owned Federal Electricity Commission (CFE) still plays a key role in the power sector as a whole.

To avoid CFE's market power preventing the newly opened energy sector from fully developing, the Energy Reform granted private participants access to the grid under a non-discriminatory basis. To guarantee such access, the operation of the national grid was transferred from CFE – which was fully vertically integrated at that time – to the National Energy Control Center (CENACE), which now acts as an independent system operator (ISO).

Also, the Energy Reform created the Wholesale Electricity Market (WEM). This market was designated to be operated by CENACE in its capacity as the sole ISO in Mexico, while maintaining CFE as the exclusive provider of transmission and distribution services, but in any case, subject to open access obligations. As a result of the creation of the WEM, private generators, suppliers, and final industrial users may now interact in a fully competitive open market based on international standards for this type of market.

Furthermore, CRE, which acted as the primary regulator in the electricity industry sector, was given autonomy from the executive branch, to oversee the general development of the power industry.

As a result of the open market principles created under the Energy Reform, private participation is mainly focused on: (i) power generation (both renewable and conventional); (ii) industrial qualified power supply, as no private company has sought so far to act as a power supplier for residential users; (iii) power marketers at the WEM (different from qualified suppliers); and (iv) qualified off-takers.

Before the enactment of the Energy Reform, private participation in power generation was allowed to the extent that such generation was either committed to (i) be sold to CFE, or (ii) be used for self-supply purposes of the power generator and its affiliates. However, these generation regimes did not create a

market *per se*, as power generation projects were built either as a result of a public bid called by CFE in its capacity as a public utility (IPP regime) or under a self-supply regime.

Notwithstanding, to this day (August 2020), the largest share of private power generation still encompasses the above-mentioned projects developed before the Energy Reform, as permits granted for those facilities were grandfathered by law and still remain in full force and effect.

The main governmental authorities and regulators in the renewable sector include:

(i) SENER, which is in charge of the public policy applicable to the renewable industry.
(ii) CRE, which acts as the primary regulator in the sector, in charge of, among others, issuing relevant secondary regulations and permits to industry players.
(iii) CENACE, which is the only ISO in Mexico and is in charge of the operation of the national grid. There are no regional transmission organisations (RTOs) in Mexico.
(iv) COFECE, which is in charge of enforcing competition policy across the Mexican economy.

Energy policy in Mexico is regulated at a federal level, as the Mexican States do not have the authority to regulate this matter. However, within the scope of their powers, some local governments may issue zoning ordinances, municipal licences, State tax and other similar requirements that may have an impact on the renewable sector.

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.

Under the LIE, SENER shall determine the minimum percentage of clean energy that obligated entities (mainly final users other than residential) shall consume as part of their regular power demand. In this regard, to comply with such requirements, final users shall either acquire clean energy or Clean Energy Certificates (CELs). This minimum requirement of clean energy supply – which is 7.4% for 2020 – is in line with international emission reduction goals ratified by Mexico through different arrangements, including the Paris Agreement.

Moreover, the LIE further provides that CFE may only acquire energy for utility supply purposes through public bidding procedures to be called by CENACE. As of August 2020, CENACE has called for four different long-term auctions for CFE to acquire clean energy and CELs exclusively. Except for the fourth auction, which was cancelled as a result of the change in the federal administration back in 2018, the first three auctions were highly successful in incentivising the development of new renewable and clean power plants.

The long-term and take-or-pay nature of the power purchase agreements (PPAs) awarded as part of such auctions worked as a booster for new renewable projects. As a result of the first three auctions called by CENACE, 65 new power plants will be developed – mostly photovoltaic – with an investment of over US$8 billion. As an example, in the second auction only, more than 9 million CELs were awarded. As of this date, no future auctions are expected in the near future.

The LTE also provides several guidelines for the federal government to follow in the design of the national energy policy, with the purpose of incentivising the use of clean and renewable energy as well as increasing energy efficiency. As a result, the LTE mandated the creation of various programmes and plans, including the (i) Transition Strategy to Promote the Use of Cleaner Technologies and Fuels (Transition Strategy), (ii) the Special Program for Energy Transition (PETE), and (iii) the National Program for the Sustainable Use of Energy (PRONASE).

Among such programmes and plans, PRONASE sets forth several measures that shall be considered to achieve the optimal use of energy by increasing energy efficiency as much as possible. Under the forecast of energy consumption provided by PRONASE, efficiency saving may reach up to 40,500 GWh by the year 2025. Furthermore, the LTE promotes the use of clean and renewable energy and the reduction of polluting emissions.

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?

Mexico has some of the largest photovoltaic resources in the world with an estimated daily production capacity of 5 kw/m^2, almost 5,000% of the domestic energy demand. However, wind energy is winning the race with a more significant share of renewable power in Mexico, followed by solar. Considering the rapid growth of the energy sector in the past few years – mostly derived from the Energy Reform – new renewable projects are spawning all across the country.

However, considering the massive solar resources in Mexico, as well as the reduction in technology prices, not surprisingly photovoltaic projects are growing faster than wind, with yearly increments exceeding 1,000% in comparison with previous years.

According to SENER, for this year 2020, 31% of the energy produced in Mexico came from clean energy, a percentage that reflects a share of 16% from hydropower generation.

Most of the renewable energy mentioned above is produced from large-scale power generation facilities. However, distributed energy is also growing rapidly, where solar power takes the lead with more than 97% of the distributed energy market share.

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?

The primary goal of the LTE, as the name already implies, is to regulate and promote the energy transition. International commitments ratified by Mexico in connection with climate change, such as the Paris Agreement or the Kyoto Protocol, may have been one of the main drivers to promote the energy transition. Please see question 1.3 above.

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

As part of the scope of the LTE, a consultation council known as the Advisory Council for Energy Transition (the Council), which is comprised by both public officials and civil society members, was created to provide SENER with relevant feedback in connection with the achievement of the goals provided for under the LTE, including but not limited to the promotion of renewables and clean energy.

Furthermore, any new regulation – other than laws enacted by Congress – shall be submitted before public consultations before the same may be passed as a final and binding regulation. This public consultation process is conducted by the National Regulatory Improvement Commission (CONAMER). As part of such public consultation process, civil society frequently submits relevant comments and opinions in connection with any proposed regulation, which should be considered by the authority before issuing the final rule. This process has been

highly effective in providing feedback to energy regulators in Mexico, as interested parties may express their opinion on the regulation before the same is enacted.

Furthermore, the LIE provides that all new renewable projects shall perform a Social Impact Evaluation to be filed with and authorised by SENER. The main purpose of such consultation is to identify all impacts that the development of the renewable project may have on existing communities, as well as any available mitigants. Also, public consultation of indigenous communities may be necessary in some cases.

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

Although most of the activities of the energy sector were opened to private investment under the Energy Reform, including power generation in all its forms (except nuclear), transmission and distribution activities were kept as public monopolistic activities. As such, they may only be rendered by the State through CFE's subsidiary companies expressly incorporated to provide such activities, namely CFE Transmisión and CFE Distribución.

Despite this, private investment may still participate as partners of CFE in order to build, improve or expand the grid through PPP (public-private partnership) structures, as well as to carry out other related services that may be needed in connection with such activities.

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

As a result of the recent changes in the energy policy by the federal government, renewable projects are facing legal uncertainties regarding their development and operation. Such changes in policy include: (i) the cancellation of auctions called by CENACE; (ii) relevant changes in the rules for issuing CELs, basically allowing CFE to receive CELs from power plants that would not otherwise be entitled to receive them; and (iii) several restrictions to the pre-operation testing of plants and the interconnection of intermittent renewable projects into the grid.

Additionally, other factors may hinder the ability of sponsors to develop renewable projects, such as the lack of transmission infrastructure in some of the areas with high renewable potential, and the incipient growth of the WEM. This lack of maturity in the WEM may in most cases limit the financing sources of a merchant project, as there are not enough records of Local Marginal Prices (PML) to comfort lenders in connection with the cash flows of the project.

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

CFE, as the sole utility supplier to this day, may only acquire power to be supplied to final users through power auctions called by CENACE, except for extraordinary imbalances, where CFE may acquire energy directly from the market. However, the current cancellation of new auctions may jeopardise CFE's ability to supply energy consumers. Please refer to question 1.3 above.

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

According to the most recent information published by SENER for 2020, the clean energy mix is as follows: geothermal, 1.2%; nuclear, 2.0%; solar, 4.3%; wind, 7.5%; and hydropower, 16%. Please note that nuclear energy is considered clean energy under the LIE. The vast majority of the remaining 70% of domestic consumption is generated from gas-fired combined cycle power plants, followed by conventional thermal facilities and coal-fired power plants.

Most of the energy consumed in Mexico is domestically generated. However, the Baja California peninsula (northern Mexico) imports a relevant amount of power – mainly during summer – from San Diego, California. Also, there are other power plants located in the US with international interconnections with Mexico, including a single power plant located in Texas which imported 3,801.3 GWh into Mexico.

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?

Currently, CFE is the only public power utility operating nationwide. As mentioned before, CFE may only acquire power through power bids called by CENACE, on which renewable projects may submit bids to sell power and CELs to CFE. Also, there are no specific regulations exclusively applicable to utility-scale projects, either conventional or renewable.

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

As mentioned before, CELs, together with minimum clean energy requirements provided by SENER on qualified users, have worked as one of the main incentives for the development of new renewable power generation projects. Also, the fact that CENACE has only allowed clean energy generators to participate in the auctions called to execute PPAs with CFE has boosted new renewables projects.

In connection with tax incentives, the applicable tax laws provide generators with the ability to apply accelerated depreciation rules in connection with those assets used for renewable-based power generation facilities. Other tax incentives include preferential duties for the importation of renewable equipment such as solar panels, and preferential treatment for dividend distribution under the Tax Profit Account (CUFIN) for investments in renewable energy.

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

Renewable energy projects are typically financed through a combination of private equity investment and limited-to-no-recourse project finance. Usually, both domestic and international financing institutions work either together or separately to finance this kind of project.

However, as mentioned in question 2.5 above, merchant power plants may have difficulties in accessing typical limited-recourse project finance, as the lack of maturity in the WEM may not provide enough certainty about the revenues of the project.

Also, strong industry players may have access to corporate loans from affiliated or parent companies.

Finally, companies with portfolios of these types of projects have been looking for financing through exchange markets.

3.4 What is the legal and regulatory framework applicable to distributed renewable energy?

In early 2017, CRE published new rules for distributed energy that boosted the development of distributed energy projects throughout the country. Such new rules allowed for net metering with bidirectional meters or net billing, as the relevant user may require.

Under the net metering scheme, energy in excess of the local consumption uploaded to the distribution grid shall be paid for by CFE using PML. In order to be considered distributed energy, the relevant generation facility shall (i) have a generation capacity smaller than 0.5 MW, (ii) be interconnected to a distribution network with a high concentration of load centres, and (iii) have the energy generated and consumed at the same location.

The most common distributed energy scheme is through rooftop solar technology. However, there are other industrial projects, such as industrial parks, that are currently using energy distribution schemes.

No generation permit from CRE is required to operate a distributed energy project.

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

So far, there are no financial incentives specifically designed to promote distributed renewable energy facilities.

3.6 What are the main sources of financing for the development of distributed renewable energy facilities?

Given the small scale of distributed energy generation facilities (i.e., generation facilities may not be larger than 0.5 MW), distributed projects are commonly equity financed by the off-taker.

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

Under the LIE, energy generated from clean sources – including renewables – is eligible to receive CELs from CRE under a 1 MW/1 CEL ratio. Such CELs may be traded under the WEM at free-market prices.

CELs were primarily conceived as a way for qualified users (as well as other entities obliged under the LIE) to comply with clean energy requirements under the LIE. Please remember that SENER periodically issues the minimum requirements of clean energy, which shall be met by obliged entities for each year and which are annually increased. The current goal is to achieve 35% by 2024 and a 50% minimum clean energy requirement by 2050.

CELs also provide renewable projects with an additional cost-free revenue source, which may be a competitive advantage *vis-à-vis* conventional technologies.

The following statutes contain the main regulatory framework applicable to the CELs: (i) the LIE and its Regulations; (ii) the LTE; (iii) the Wholesale Electricity Market Rules and Manuals (together Market Rules); (iv) Guidelines for the issuance and acquisition of CELs; and (v) other secondary regulations that may be issued by regulatory agencies from time to time.

During 2019, CRE approved relevant changes to the rules for CELs, allowing CFE to receive CELs from power plants that would not otherwise be entitled to receive them. Such amendment to the rules was judicially challenged and is still subject to judicial review. A final ruling on this constitutional claim is expected to be issued shortly.

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

Please refer to question 3.7 above regarding the purchase of CELs to promote renewable energy.

4 Consents and Permits

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

Utility-scale renewable energy facilities are subject to the same regulatory regime applicable to any other power generation facilities with a generation capacity above 0.5 MW.

The specific authorisations, permits, and governmental approvals that are required for the development and operation of each renewable generation facility may be affected by the desired sitting location of the facility and the type of technology to be used. However, the main permits and authorisations needed for all projects are:

- Generation permit from CRE.
- Interconnection Agreement with CFE (authorised by CENACE).
- Social Impact Assessment Authorisation from SENER.
- Environmental Impact Authorisation from SEMARNAT.

Other authorisations that may be needed on a case-by-case basis are as follows:

- Change of forest land use authorisation.
- Clearance from the National Institute of Anthropology and History.
- Authorisation from the Civil Aviation Department.
- Local land use and construction licences.
- Water concessions.
- Water discharge permits.

Also, hydropower projects may need additional permits as the same are usually developed on national water bodies and using land subject to public domain.

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

No specific permits are required for distributed projects other than an interconnection agreement with CFE (if applicable). Please refer to question 3.4 above.

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

As mentioned above, the National Grid is subject to open access obligations under a non-unduly discriminatory basis. However, for any power generator to be able to interconnect any generation facility to the grid, it would be necessary to execute an interconnection agreement with CFE. Although such agreement is executed with CFE, the execution of such interconnection agreement must previously be authorised by CENACE.

To obtain CENACE's authorisation to execute the interconnection agreement, the applicant must meet several requirements provided for under the Interconnection Manual. The specific studies and conditions required to execute such interconnection agreement highly depend on (i) the size of the project, and (ii) the type of generation facility. However, the most common requirements that must be met include the execution by CENACE of three different interconnection studies (such as the Indicative Study, Impact Study, and Facilities Study), under which CENACE will determine if the connection is feasible or will set out the additional infrastructure that the power generator would need to develop, at its own cost, to execute the physical interconnection.

Once the studies are ready, and if the applicant agrees with their content, the power generator may request CENACE to authorise the execution of the interconnection agreement, provided that the generator posts a relevant financial guarantee – usually a letter of credit – to secure its obligations under the interconnection agreement.

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

Please refer 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?

Microgrids are not specifically regulated under Mexican law. However, there are no limitations targeted explicitly to prevent the execution of this kind of grid. However, as a result of the lack of comprehensive regulations in connection to microgrids, legal requirements and other details regarding their operation are uncertain.

5 Storage

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

Energy storage is allowed under the Market Rules, but the same have minimal detail about the operation of storage infrastructure. Therefore, the legal framework applicable to other types of storage, including molten salt and pumped hydropower, is uncertain. Secondary regulation on this issue seems to be pending.

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

No, there are no financial or regulatory incentives designed explicitly to promote the storage of renewable energy.

6 Foreign Investment and International Obligations

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

Currently, there are no limitations to foreign investment or relevant restrictions applicable exclusively to foreign entities in connection with the development and operation of renewable energy projects, regardless of their size.

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

No, there are no such restrictions.

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

No. However, any foreign individual who wishes to work in Mexico would need to obtain an employment authorisation or work permit from the Mexican government.

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

No, there are no limitations regarding the origin of materials to be used in renewable projects. However, any materials imported into the country may be subject to relevant import duties depending on their origin. In this regard, Mexico has executed several free trade agreements with different countries. Thus, imports from specific countries may be subject to lower duties than others.

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 Federal Antitrust Commission (COFECE) is the Mexican regulator in charge of enforcing competition policy across the Mexican economy, including in relation to the renewable energy sector.

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?

The Federal Competition Statute (LFCE) prohibits economic agents in any industry from taking part in anti-competitive actions, proscribed as absolute and relative monopolistic practices, the former being horizontal agreements and the latter abuses of dominance. There is yet to be an investigation for monopolistic practices in the renewables market. However, there has been a recent fine imposed upon players in the industry for failure to notify a reportable transaction under the merger control provisions also in the LFCE. The merger control provisions under the LFCE provide that certain transactions should be subject to a pre-merger review from COFECE, including those related to the acquisition of assets or M&A transactions meeting or exceeding the monetary thresholds provided for under the LFCE.

The LFCE also proscribed illicit concentrations as anti-competitive practices, these being mergers and/or acquisitions between market players that are notified before COFECE and have anti-competitive effects in a relevant market. For all analytical purposes, such conduct is substantially assessed in the form of a relative monopolistic practice.

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

Absolute monopolistic practices are proscribed in article 53 of the LFCE as agreements among competing firms that have the purpose or effect of price fixing, market allocation, output restriction, bid rigging and information exchanges for any of the aforementioned items. These are *per se* violations to the LFCE, and so the criteria applied by COFECE are stringent in the sense that the mere existence and evidence of an agreement is sufficient to prosecute a case, regardless of the actual damage or potential claims towards efficiency.

With regard to relative monopolistic practices, these are proscribed by articles 54–56 of the LFCE as unilateral conduct or agreements by a firm(s) with dominance in a relevant market with the purpose or effect of unduly displacing competitors or denying access to a relevant market. The specific criterion applied by COFECE is substantial lessening of competition insofar that relative monopolistic practices are premised upon the existence of anti-competitive effects in a market, and so a case brought by COFECE is necessarily contingent upon proving these effects.

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.

The dispute resolution mechanism applicable to disputes between industry players in the energy sector depends on the parties involved and the type of relationship between them (i.e., contractual, regulatory, etc.).

For example, if the relevant dispute arises between industry players and CENACE or with CFE in connection with transmission or distribution services, the dispute resolution mechanism under the Market Rules shall apply. Under this mechanism, the dispute may be ultimately resolved by CRE.

On the other hand, if the dispute arises from a private contractual relationship between industry players, the relevant dispute shall be resolved under the dispute resolution mechanism previously agreed by the parties. If no previous dispute resolution mechanism was agreed, then local or federal courts shall apply, as the case may be.

Furthermore, industry players may also agree to subject their energy-related disputes to the Market Rules.

Also, Mexico has entered into several international agreements that protect foreign investment, including free trade agreements executed with different countries and regions, such as NAFTA (now USMCA) and FTA EU-MX. Foreign investors protected under those agreements may submit claims against the Mexican government, which would be resolved under the specific dispute resolution mechanisms provided for under such agreement.

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

Yes. Both PPAs and financing documents executed in connection with renewable power generation projects usually provide for arbitration as the preferred dispute resolution mechanism. However, considering the costs associated with arbitrations held under international rules (such as ICC or LCIA), such dispute resolution mechanism may be too expensive for small projects or contracts.

Local arbitration under local bodies of arbitration is quite uncommon. Parties tend to subject their disputes to local or federal courts when international arbitration is not available.

8.3 What interim or emergency relief can the courts grant?

Mexican courts can grant interim and definitive injunctions (*suspensiones*) against governmental actions or rulings that may irreparably harm any individual. Interim injunctions are granted shortly after the claim is filed with the court to immediately suspend the effect of the challenged governmental action to prevent any imminent damage. Such injunction, if granted, will remain in full force and effect until the time when the relevant court decides on the definitive injunction.

On the other hand, a definitive injunction may be granted once the relevant court has properly assessed if the grounds of the claim require such injunction to be in place. If granted, the definitive injunction will remain in full force and effect until the time when the relevant claim is resolved.

Recently, SENER issued a highly controversial policy in connection with the reliability of the grid, the effects of which are currently suspended by virtue of definitive injunctions granted as a result of several constitutional claims.

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?

Yes, Mexico ratified the New York Convention in 1971 with no reservations. Therefore, Mexico will recognise arbitral awards awarded even in those countries that are not part of the Convention.

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?

The Mexican government has historically honoured arbitral awards, whether favourable or not, as long as such awards have been issued in compliance with the applicable rules. As an example, in 2013, Mexico lost an arbitration claim filed with ICSID by an affiliate of Abengoa in connection with the cancellation of a project in Mexico. Shortly after the arbitral award was notified to Mexico, the Mexican government publicly stated that it would honour the award and pay the relevant sum to Abengoa.

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?

We are not aware of any relevant claims submitted by a foreign investor against the Mexican state in connection with renewable projects. However, there are examples of judicial resolution

in connection with renewable projects, where relevant governmental authorisations have been upheld against claims filed by third parties.

In this regard, a 396 MW wind farm project identified as "Mareña", which was originally sponsored by the Spanish company Prenal, won a constitutional claim filed by various members of indigenous communities near the project influence area. As part of the claim, the indigenous communities considered that the indigenous consultation was not executed according to the applicable law. In the end, the Mexican Supreme Court denied the petition filed by those indigenous communities. To this day (August 2020), the project is operating normally.

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.

As a result of the election of Andres Manuel López Obrador (AMLO) as the new Mexican president in 2018, the existing energy policy in Mexico has been under heavy scrutiny by the federal government. There have been controversial speeches and actions by the Mexican government – and AMLO himself – targeting the renewable sector in particular.

As part of such new policies, governmental agencies and CFE commenced a frontal attack against renewables, primarily based on alleged reliability issues for the grid (as a result of the intermittent nature of renewables), and alleged economic losses suffered by CFE by the acquisition of renewable power and CELs during the auctions called by CENACE. As a result, among others, (i) ongoing and future auctions called by CENACE were cancelled, (ii) CENACE imposed new restrictions to interconnect and reach Commercial Operation Date on ongoing renewable projects, (iii) SENER changed the dispatch preference, substantially increasing the risk of curtailment of renewable projects, (iv) CRE allowed CFE and other grandfathered projects to receive CELs in contravention of existing policies, and (v) CFE has intended to renegotiate existing take-or-pay agreements.

As a response to such governmental actions, industry players together with NGOs, COFECE and State governors have filed constitutional claims in federal courts and the Supreme Court against the above-mentioned actions. To this day (August 2020), the effects of those secondary regulations are suspended through judicial injunctions resulting from those constitutional claims, considering that the relevant laws resulting from the Energy Reform are still in full force and effect. Therefore, secondary regulation issued by agencies and other governmental bodies may not contradict the legal principles laid out under the Energy Reform.

Finally, there has been a leak of an unofficial document allegedly issued by AMLO, which considers legislative measures to counteract the Energy Reform to strengthen CFE's position. However, AMLO's lack of a qualified majority in both Federal and State Congresses – required to amend the Constitution – together with judicial review, plays a critical role as checks and balances against AMLO's new policies.

Note

Please note that the Mexican energy sector is currently changing rapidly, and regulations may change at any time. This chapter was drafted in August 2020, and provides the regulatory situation at that date.

Jorge Cervantes is a member of the Executive Committee of the Firm and he specialises in energy, projects, infrastructure finance, M&A and private equity transactions. He has extensive experience advising parties in a wide range of complex cross-border and national transactions in Mexico, representing sponsors, developers, private equity investors, financial institutions, banks, lenders and governments on different acquisitions, dispositions, joint ventures, and financings.
His experience encompasses a range of transactional and regulatory work and has included some very relevant transactions involving power plants, renewable energy, oil & gas, petrochemicals, LNG, pipelines, telecommunications, real estate, hotels and infrastructure projects in general.
Jorge Cervantes' practice has been recognised by prominent international publications such as *Chambers and Partners*, *Latin Lawyer*, Euromoney's *Expert Guides*, *Who's Who Legal*, *IFLR1000*, *Best Lawyers* and *LACCA Approved*. He constantly participates as a speaker in national and international project finance and energy forums.

Gonzalez Calvillo
Montes Urales 632
Lomas de Chapultepec
11000, Mexico City
Mexico

Tel: +52 55 5202 7622
Email: jcervantes@gcsc.com.mx
URL: www.gcsc.com.mx

Hernando Becerra has over 15 years of professional experience and has oriented his legal practice to cross-border M&A, private equity, and financing transactions, mainly focused in the energy, power, agriculture, and infrastructure sectors.
His practice includes advising developers and banks in infrastructure financing transactions. In addition, he has participated in mergers and acquisitions advising local and foreign investors in their investments in Mexico.
Also, his experience includes working as an international associate at the New York office of Milbank, Tweed, Hadley & McCloy, LLP from October 2011 to August 2014. He is admitted to practise both in Mexico and New York.
Hernando Becerra has been recognised in the Project Finance and Development practice by prominent international publications including *Best Lawyers*, as an Expert in the Project Finance field by *Who's Who Legal* and as a highly regarded lawyer in M&A by *IFLR1000*.

Gonzalez Calvillo
Montes Urales 632
Lomas de Chapultepec
11000, Mexico City
Mexico

Tel: +52 55 5202 7622
Email: hbecerra@gcsc.com.mx
URL: www.gcsc.com.mx

Pedro Lladó Camarillo has experience advising national and international clients in the power generation and electricity markets as well as the oil & gas industry, with an emphasis on the regulatory and financing components that are involved in such kinds of transactions.
His work in the energy field includes representation of clients across the Upstream, Midstream and Downstream hydrocarbon industry sector, including challenges in the restructured energy fuels market. He has developed significant experience in energy regulatory work, PPAs, and EPCs, among other types of contracts. He has also actively participated in several project finance transactions in the energy sector.
He obtained a Master of Laws with a concentration in Global Energy (LL.M.) from the University of Texas at Austin, United States, and a law degree (J.D. equivalent) with a *cum laude* distinction from Universidad de las Américas Puebla (UDLAP).

Gonzalez Calvillo
Montes Urales 632
Lomas de Chapultepec
11000, Mexico City
Mexico

Tel: +52 55 5202 7622
Email: pllado@gcsc.com.mx
URL: www.gcsc.com.mx

Gonzalez Calvillo is a full-service firm with a solution-centred approach. We are a recognised leader in the energy and power sectors and are considered as one of the preeminent firms in Mexico with significant experience in the development and financing of greenfield and brownfield renewable energy projects.
The depth and breadth of our energy team's expertise and deep understanding of the commercial issues that drive our clients' business, coupled with the support of our specialised complementary practice areas, allow us to cover all legal aspects of renewable projects, including regulatory matters, permitting, financing, M&A, real estate, EPC, O&M and PPAs, procurement, environmental and social matters, circular economy, sustainability, IP, labour, compliance and other relevant aspects for the development, financing, acquisition and disposition of renewable projects and the sale and purchase of power and other associated products, such as clean energy certificates, under PPAs and in the Mexican wholesale power market.

www.gcsc.com.mx

gonzalez calvillo
meet new standards

ICLG.com

Current titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Outsourcing
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms

@ICLG_GLG

The International Comparative Legal Guides are published by:

global legal group