



ICLG

The International Comparative Legal Guide to:

Oil & Gas Regulation 2018

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A practical cross-border insight into oil and gas regulation work

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Mexico

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Raúl Fernando Romero Fernández



1 Overview of Natural Gas Sector

1.1 A brief outline of your jurisdiction's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

According to the National Hydrocarbons Commission (*Comisión Nacional de Hidrocarburos* or "CNH"), the production of natural gas in Mexico, during the first semester of 2017, was approximately 26,094.96 million cubic feet per day ("MMCFD"), which represents a decrease of 4,658.30 MMCFD compared to the figures shown for the same period in 2016. Additionally, it is important to note that most of Mexico's natural gas reserves discovered in 2017 are located in *Campo Akal* (Cantarell area), *Region Marina Noreste*, Gulf of Mexico, with a 3P category, and account for approximately 2,181.61 billion cubic feet ("Bcf").

According to the Mexican Ministry of Energy (*Secretaría de Energía* or "SENER"), exports from U.S. pipelines to Mexico will reach 3.8 billion cubic feet per day (Bcf/d) in 2018, which represents more than twice the exports of natural gas from the U.S. to Mexico in 2013 (1.8 Bcf/d). This projected growth is driven mainly by higher demand from Mexico's electric power sector throughout the country.

According to the CNH, in August 2017, *Petroleos Mexicanos* ("Pemex") burned and produced 128.2 MMCFD of natural gas in Mexico. This corresponds to a reduction of 352.4 MMCFD compared to the same month in 2016. To put this into perspective, this reduction represents 9% of the natural gas produced.

Furthermore, it is important to note that a new underwater pipeline running from southern Texas, USA, to Tuxpan, Veracruz, Mexico (along the coast of the Gulf of Mexico) will commence operations in 2018. Please be advised that such pipeline will have a capacity of 2,600 million cubic feet per day ("MMPCD") and an approximate length of 800 kilometres ("km"). This project will contribute to satisfying the natural gas requirements at the Federal Electricity Commission (*Comisión Federal de Electricidad* or "CFE") and will supply natural gas to newly constructed power plants and others that operate with fuel oil, which can be converted to use natural gas.

In July 2017, according to statistics published by the U.S. Energy Information Administration ("EIA"), SENER opened the onshore portion of the Burgos Basin, a shale-rich basin in northeastern Mexico, for natural gas exploration and development by private companies. This is the first time non-state entities were offered access to the Burgos Basin for development since the creation of the national oil company Pemex in 1938.

1.2 To what extent are your jurisdiction's energy requirements met using natural gas (including LNG)?

Currently, Mexico's energy requirements are met through diverse power sources such as natural gas (55%), hydraulic (14.8%), carbon (13%), fuel oil (10%), uranium (3.7%), geothermal (2.3%), wind (0.7%) and solar (less than 0.1% of total production).

Although energy requirements are mainly met through the use of natural gas, statistics show a slight increase in the use of renewable energy sources such as hydraulic and wind power.

1.3 To what extent are your jurisdiction's natural gas requirements met through domestic natural gas production?

The substitution of natural gas produced from oil for electricity production has grown in 2017, with the main objective of reducing costs and the emission of pollutants, and satisfying the demand for electricity in the country.

According to the Ministry of Energy, from 2015 to 2030, the demand for natural gas will have increased by 20.3%, reaching a volume of 9,030.4 MMCFD. With regards to international trends, it is expected that the demand for electric power will have, from 2015 to 2040, increased by 24.4%, reaching a volume of 32,677.6 MMPCD.

1.4 To what extent is your jurisdiction's natural gas production exported (pipeline or LNG)?

According to the EIA, in August 2017, U.S. natural gas exports through pipelines to Mexico reached unseen levels, now estimated at almost 4.04 billion MMCFD.

U.S. gas exports are expected to grow further in 2018, due to growing natural gas exports to Mexico and increase in domestic demand.

2 Overview of Oil Sector

2.1 Please provide a brief outline of your jurisdiction's oil sector.

Pemex has reported that its average oil production in July 2017 was below 2 million barrels per day (“MBD”), the lowest level for a month in more than 20 years. The average production during July 2017 was 1.99 MBD compared to 2.01 MBD in June. According to official statistics, Pemex has estimated that Mexico will produce 1.951 MBD during 2018, lower than 2017.

2.2 To what extent are your jurisdiction's energy requirements met using oil?

In 2015, the demand for fossil fuels at the national level reached a volume of 17,115 MMPCD which represented an increase of 1.7% compared to 2014. Of the total of this demand, natural gas, with a share of 43.8% with a volume of 7,504.1 MMPCD, is followed by gasoline with a participation of 22.3%, diesel with 12.7%, coal with 7.3%, gas L.P. with 6.3%, fuel oil 4.9%, and finally coke of oil with 2.6% participation.

2.3 To what extent are your jurisdiction's oil requirements met through domestic oil production?

The largest demand was presented by the public electricity sector with a volume of 3,228.9 MMCFD of natural gas, followed by the oil sector with 2,200 MMPCD, the industrial sector with 1,375.8 MMPCD, and private demand with 568.6 MMCFD. The lowest participation was the residential sector with 94.6 MMPCD, services with 33.7 MMPCD and, finally, the transportation sector with a volume of 2.4 MMPCD.

It is expected that in almost all sectors there will be an increase in demand, with the exception of the oil sector which will decrease by 34% compared to 2015. The electricity sector will continue to be the largest consumer with 58.7% participation; followed by the industrial sectors, with 23.2%; tanker, with 16.1%; residential and services, with 1.3% and 0.6% respectively; and, finally, the motor transport sector with 0.1%.

2.4 To what extent is your jurisdiction's oil production exported?

According to Pemex, Mexico exported, from January 2017 to August 2017, almost 1,099 thousand barrels per day.

Mexico is one of the leading exporters of crude oil worldwide, through its national oil company Pemex (and its subsidiaries).

3 Development of Oil and Natural Gas

3.1 Outline broadly the legal/statutory and organisational framework for the exploration and production (“development”) of oil and natural gas reserves including: principal legislation; in whom the State's mineral rights to oil and natural gas are vested; Government authority or authorities responsible for the regulation of oil and natural gas development; and current major initiatives or policies of the Government (if any) in relation to oil and natural gas development.

With the enactment of the Constitutional Reform in Energy Matters on

December 20, 2013 (the “Energy Reform”), a major structural change took place which contributed to the development of the country through the sustainable and efficient use of all natural resources; but above all, it had a high impact on the oil exploration and extraction industry.

All this began thanks to a reform at the constitutional level in which new provisions on energy were added.

One of the major advances of the Energy Reform has been in natural gas, particularly in the extraction and exploration of natural gas, with the introduction of Round Zero, Round One and Round Two. Round One is the first international public tender for the exploration and extraction of hydrocarbons in the history of Mexico.

Derived from the above, various provisions were published in the Official Gazette of the Federation, specifying the requirements for treatment and refining permits for oil, natural gas processing, as well as matters involving the transportation, storage, distribution and commercialisation of natural gas, in order to generate a market that is more competitive and somehow more efficient.

3.2 How are the State's mineral rights to develop oil and natural gas reserves transferred to investors or companies (“participants”) (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

There are many types of exploration and extraction contracts that may be tendered by and executed with the CNH, but the contract to be awarded is previously decided by SENER. The contracts are: (i) services; (ii) profit sharing; (iii) production sharing; (iv) licence; and (v) any other contract resulting from the combination of the foregoing. By law, mineral rights of oil and natural gas shall remain state property.

Under Mexican law, a licence contract gives partial ownership and possession to the contractor in exchange for the payment of taxes to the Mexican government. Finally, profit-sharing and service contracts do not give title or possession to the contractor of the hydrocarbons, only cash considerations.

3.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

In accordance with the CNH, all contractors that want to obtain exploration and extraction contracts, must carry out all operations plans as approved by the CNH. Also, the execution of any contract must include investment and several pieces of information depending on the block they want to operate in.

As mentioned in the answer to question 3.2 above, there are five different types of exploration and extraction contracts that have to be approved and executed with the CNH: (i) services; (ii) profit sharing; (iii) production sharing; (iv) licence; and (v) any other contract depending on the combination of the foregoing.

Once the contract has been approved, the contractor has several obligations to carry out during the entire duration of the contract. Moreover, the amount of the work commitment would vary depending on the size and type of the fields that they will work with.

3.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of oil and natural gas reserves (whether as a matter of law or policy)?

According to the Mexican Constitution, oil and solid, liquid or

gaseous hydrocarbons in Mexican subsoil are the inalienable and indefeasible property of the nation and no concessions will be granted. The purpose of this is to provide income for the state which will contribute to the long-term development of the nation, and provide income for the exploration and extraction of oil and other assignments of the productive enterprises of the state or through contracts with them or with individuals, in the terms of the Regulatory Law.

In 2014, the CNH stated in Round Zero that Pemex has to carry out its exploration and extraction plan in compliance with several contracts.

3.5 How does the State derive value from oil and natural gas development (e.g. royalty, share of production, taxes)?

In general, contractors under exploration and extraction contracts must pay: (i) a royalty that is a percentage of the gross revenues of the production; (ii) an exploration fee per square kilometre of the block during the exploration phase of the contract; (iii) a percentage of the profit oil or additional percentage of the production depending on the type of contract; and (iv) income tax applicable to the profits obtained from hydrocarbons production.

3.6 Are there any restrictions on the export of production?

As for service contracts and profit-sharing contracts, oil and gas production is transferred to a special State Trader (“*Comercializador del Estado*”) as an intermediate, who will sell and then distribute the proceeds from the sale to: (i) the Mexican Fund for Stability and Development; and (ii) the contractor, once its commission fee has been charged.

On the other hand, for production-sharing contracts and licence contracts, the contractor is free to store or sell the production it owns to national or international markets, subject to the regulatory permits set forth by the Energy Regulatory Commission (*Comisión Reguladora de Energía* or “CRE”).

3.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

Under the current legislation, there are no currency exchange restrictions or direct transfer fund restrictions. Notwithstanding the above, depending on the type of contract under which hydrocarbons are produced, contractors may not be able to market the production directly, but only through a special State Trader, which may indirectly limit currency exchange options available to monetise production.

3.8 What restrictions (if any) apply to the transfer or disposal of oil and natural gas development rights or interests?

Pursuant to the Hydrocarbons Law and the model contracts of the corresponding Round Bidding Guidelines, transfer of rights or interests shall not be permitted unless authorised by the CNH. The CNH will consider the same criteria for the prequalification process of the bid. Additionally, no change of control, either direct or indirect, shall exist without the previous consent of the CNH.

3.9 Are participants obliged to provide any security or guarantees in relation to oil and natural gas development?

As part of the formal bid proposal, bidders have to present a seriousness guarantee that shall be executed by the CNH in case a bidder wins a block in a bidding round but does not sign the corresponding contract. Once the winner of the bid executes the exploration and extraction contract with the CNH, such participant shall submit one Corporate Guarantee plus an additional Performance Guarantee to comply with the minimum work commitment. The Corporate Guarantee shall be submitted by the ultimate parent of the winning bidder that obliges jointly and severally with such bidder.

3.10 Can rights to develop oil and natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

Article 45 of the Hydrocarbons Law provides that contractors and assignees are allowed to report, for accounting and financial purposes, all the benefits of the exploration and extraction contracts or assignments, as long as such assignment or contract sets forth that mineral rights are owned by the state.

3.11 In addition to those rights/authorisations required to explore for and produce oil and natural gas, what other principal Government authorisations are required to develop oil and natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

The Hydrocarbons Law sets forth the need for a social impact authorisation issued by SENER for the development of a hydrocarbons project. It is noteworthy to mention that rights of way obtained for the development of hydrocarbon blocks are subject to a special acquisition process, which involves both executive and judicial authorities.

The National Agency for Industrial Safety and Environmental Protection for the Hydrocarbons Sector (*Agencia Nacional de Seguridad Industrial y de Protección al Medio Ambiente del Sector Hidrocarburos* or “ASEA”) regulates and supervises environmental protection, and health and safety.

The ASEA’s health and safety provisions, which are applicable for activities related to hydrocarbons, are still pending publication. Also, Mexican law establishes that any person involved in the development of any oil and gas activity has to obtain an environmental impact authorisation, granted by Ministry of Environmental and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales* or “SEMARNAT”).

3.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in oil and natural gas development? If so, what are the principal features/requirements of the legislation?

The ASEA Law sets out provisions for the abandonment or decommissioning of this kind of structure used in oil and natural gas.

Furthermore, the model contract used in Round One has a specific provision that requires the contractor to set an abandonment trust, which shall be controlled jointly by the contractor and the CNH, in case a commercial discovery exists.

3.13 Is there any legislation or framework relating to gas storage? If so, what are the principal features/requirements of the legislation?

Pursuant to the Hydrocarbons Law, gas storage services, as a general rule, are subject to non-discriminatory third parties open access in exchange of a tariff payment approved by the CRE. A certain percentage of the storage capacity may be available for self-use, subject to prior authorisation by the CRE.

Despite the above, it is essential to highlight that, as of August 28, 2014, the creation of the National Center of Natural Gas Control (hereinafter referred as "CENAGAS") was decreed with the purpose of generating a competitive natural gas transportation and storage market. This centre will also act as an independent operator of the Integrated National Natural Gas Transportation and Storage System, which is meant to maintain the continuity and safety of the supply of natural gas across Mexican territory.

4 Import / Export of Natural Gas (including LNG)

4.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

According to Mexican regulations, contractors carrying out regulated activities and cross-border sales and deliveries, in relation to exportation activities, have to obtain a permit issued by SENER, an authorisation from the Tax Authorities is also needed, and for a marketing permit an authorisation is required from the CRE.

5 Import / Export of Oil

5.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of oil and oil products.

Following the Energy Reform and with the entry into force of the Hydrocarbons Law, the legal framework that has governed the development of the hydrocarbons and oil industry in the country was profoundly modified so that Mexico can achieve important energy goals and a new market structure.

Pursuant to article 48 of the Hydrocarbons Law, the export and import of hydrocarbons shall be subject to a permit granted by the Ministry of Energy. As for service contracts and profit-sharing contracts, oil and gas production is transferred to a special State Trader, an intermediary, which will distribute any proceeds from the sale to (i) the Mexican Fund for Stability and Development, and (ii) the contractor, once its commission fee has been charged.

On the other hand, for production-sharing contracts and licence contracts, the contractor is free to store or sell the production it owns to national or international markets, subject to the regulatory permits set forth by the CRE.

For sale of oil in Mexico, the contractors must obtain a permit issued by the CRE, and several Tax authorisations are required.

6 Transportation

6.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

According to the Hydrocarbons Law, transportation of oil and gas through discharge lines (from upstream production points to the point of entry into the transmission network) are considered collection activities (*Recolección*), which are regulated by the CNH. However, such governmental entity has not issued any regulations related to hydrocarbons collection activities.

As of today, only Pemex owns hydrocarbons collection facilities, given that prior to the enactment of the Energy Reform it was the only entity authorised to carry out E&P activities in Mexico.

6.2 What governmental authorisations (including any applicable environmental authorisations) are required to construct and operate oil and natural gas transportation pipelines and associated infrastructure?

Notwithstanding that the Hydrocarbons Law does not require obtaining any permits to carry out collection activities, new regulations to be published by the CNH may include further provisions in this respect.

Regardless of future regulations issued by the CNH, the construction and operation of collection pipelines would also require other federal, state or municipal permits and authorisations, including those related to environmental impact, land use and archaeological site protection.

6.3 In general, how does an entity obtain the necessary land (or other) rights to construct oil and natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

The hydrocarbons industry is of public interest and exclusive federal jurisdiction; therefore, only the federal government may stipulate the applicable standards for land regulation related to the sector's activities.

The Hydrocarbons Law contemplates certain procedures for acquiring land and/or rights of way for hydrocarbons projects that facilitate land access and/or land use in coordination with both executive and judicial authorities.

Furthermore, in case an agreement between the project developers and landowners is not possible, governmental authorities can enforce compulsory acquisition to grant land access through legal easements.

6.4 How is access to oil and natural gas transportation pipelines and associated infrastructure organised?

The CNH has not published applicable regulations to gathering activities. It is plausible that this service will be subject to open access obligations for third parties with open seasons to award the system's available capacity in a non-discriminatory way, as it works with transmission, storage and distribution services.

6.5 To what degree are oil and natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

Before the Energy Reform, Pemex was the only oil and gas producer in Mexico and the only operator of gathering pipelines. Much of the information regarding these type of pipelines is not available to the public; however, the pending regulations of these activities by the CNH will probably provide cooperation and coordination mechanisms as they do in the case of natural gas transmission, storage and distribution.

6.6 Outline any third-party access regime/rights in respect of oil and natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport oil or natural gas compel or require the operator/owner of an oil or natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

Natural gas transportation/collection regulations are pending publication by the CNH, but they will probably function in an analogous way to those applicable to transmission, storage and distribution.

In general for other activities, permit-holders, who provide transportation and distribution services to third parties through pipelines, as well as hydrocarbons storage services, have the obligation to provide open and not unduly discriminatory access to their facilities and services, subject to the availability of their systems. If there is no available capacity, permit-holders may execute agreements with third parties in order to expand or extend their systems. Open seasons may also be carried out in order to determine the expansion and/or extension requirements as well as the investment scheme. The users of such system shall pay interconnection costs.

6.7 Are parties free to agree the terms upon which oil or natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

The Terms and Conditions of each permit-holder may be negotiated between the parties and can include certain provisions or special conditions, subject to the approved Terms and Conditions for the Transportation Services, and subject to approval from the CRE.

Furthermore, CRE shall approve a maximum tariff to be charged for the transportation of natural gas.

7 Gas Transmission / Distribution

7.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

The Hydrocarbons Law provides the regulations for natural gas transmission and distribution activities, the authority in charge of granting permits for this activity is the CRE. The CRE also approves the applicable tariffs for the distribution services.

The distribution permits the CRE grants depends on the specific geographic zone, taking into account the technical and economic requirements that allow the development of the distribution network.

7.2 What governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

Once the CRE grants the distribution permit, the permit-holder must also obtain: (i) a construction and land use authorisation granted by the local and municipal authorities; (ii) a property or possession title; (iii) an environmental impact authorisation with a risk study issued by the ASEA; and (iv) an archaeological authorisation issued by the Anthropology and History National Institute. In addition, the permit-holder may also require road crossing authorisations and electricity transmission line crossing authorisations, and other permits and authorisations.

7.3 How is access to the natural gas distribution network organised?

The natural gas distribution network is divided into geographic zones allotted across the country and assigned by the CRE either to exclusive permit-holders, or if it is not a first-time assigned zone, to different permit-holders that may carry out the activity within such geographic zone. Currently, there are 15 geographic zones and approximately 24 granted permits. Subject to the applicable regulations, open access shall be granted to users that require distribution services.

7.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

Distributors are obliged by law to extend or expand their systems within their geographic zone. Furthermore, natural gas distribution companies shall develop an expansion plan in order to connect new users to their system.

7.5 What fees are charged for accessing the distribution network, and are these fees regulated?

The fee that is charged to users of the distribution network is determined by the CRE for each permit-holder.

7.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

There are no restrictions or limitations in relation to acquiring an interest in a gas utility or the transfer of assets forming part of the distribution network. However, certain notifications shall be given to the CRE and, depending on each case, permits for modifications may have to be approved by such Commission.

8 Natural Gas Trading

8.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

The Hydrocarbons Law established that natural gas trading activities

are selected as regulated activities, and for this activity one must obtain a commercialisation permit issued by the CRE. Article 27 of the Mexican Constitution sets forth that the state is the owner of all the hydrocarbons situated in Mexican subsoil.

Natural gas extracted under a profit-sharing contract will all be traded through a State Trader hired by the CNH, while natural gas extracted under a licence contract will be owned and freely traded by the contractor, but shall require a permit by the CRE to trade in Mexican territory or to export natural gas. In the production-sharing contract the state will trade by its own State Trader in its proportion of natural gas and the proportion that corresponds to the contractor, the latter will be traded by such contractor, in case of licence contracts.

8.2 What range of natural gas commodities can be traded? For example, can only “bundled” products (i.e., the natural gas commodity and the distribution thereof) be traded?

Natural gas commodities can be traded by individuals or entities, only within the requirements provided by law; this includes bundled products and services.

9 Liquefied Natural Gas

9.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

Transportation through pipelines and storage of Liquefied Natural Gas (“LNG”) is considered a regulated subject matter under Mexican regulation. Also, storage of LNG has been a regulated activity since the Energy Reform.

Furthermore, liquefaction, regasification, compression and decompression of natural gas, under the new regime of the Hydrocarbons Law, all require a permit granted by the CRE. The joint or separate performance of these activities shall be subject to certain general provisions the CRE has yet to issue.

9.2 What governmental authorisations are required to construct and operate LNG facilities?

Notwithstanding, the fact that certain regulatory provisions applicable to LNG plants are still pending, the construction and operation of an LNG plant will require a regulatory permit by the CRE, as well as other relevant permits required for any energy project such as a social impact authorisation, an environmental impact authorisation, and local construction licences.

9.3 Is there any regulation of the price or terms of service in the LNG sector?

The services required for the LNG sector are regulated by CRE not only in terms of their performance, but in terms of the consideration or tariff that is charged for the rendering of such services.

9.4 Outline any third-party access regime/rights in respect of LNG facilities.

Currently, only the storage of LNG is subject to an open access obligation towards third parties. For such purposes, permit-holders are required to carry out open season procedures in order to accommodate the requests of interested third parties.

10 Downstream Oil

10.1 Outline broadly the regulatory framework in relation to the downstream oil sector.

The Hydrocarbons Law established that all commercialisation permits, transportation, storage, distribution and open access to pipelines and facilities, use of own transport and storage, and authorisation of managers’ measurements are granted by the CRE. Moreover, oil and gas, petrochemicals, or refined products trading require the commercialisation permit from the CRE. SENER is in charge of oil refining and natural gas processing activities.

Notwithstanding the above, oil products that are traded by individuals are not subject to regulated prices, but oil products that Pemex trade are subject to the terms of the first-hand sales approved by the CRE.

10.2 Outline broadly the ownership, organisation and regulatory framework in relation to oil trading.

Pemex and its subsidiaries may trade oil and gas extracted by means of their assignation titles.

Additionally, contractors under certain hydrocarbons exploration and extraction contracts (namely, licence contracts and production-sharing contracts) may trade oil and gas extracted from their fields on their own. Otherwise, oil and gas are traded through the State Trader which, until December 31, 2017, shall be Pemex.

11 Competition

11.1 Which governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the oil and natural gas sector?

The Federal Economic Competition Commission (“COFECE”) is, in general, the authority in charge of regulating competition and anti-trust practices in Mexico. Nevertheless, the CRE, with the opinion of the COFECE, shall issue certain administrative provisions that apply to regulated activities of the hydrocarbons sector in order to promote the efficient development of competitive markets.

11.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

The Federal Antitrust Law in Mexico regulates different anticompetitive practices such as absolute monopolistic practices, relative monopolistic practices, illicit economic concentrations and any other restriction being imposed on the market. The COFECE is entitled to regulate any economic activity performed by any economic agent; therefore, its scope is of general applicability in the country.

11.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

In 2014, with The Federal Antitrust Law, the COFECE has new powers to eliminate barriers to competition, regulate access to essential inputs and order the divestiture of assets, if the case requires so, to restore competition conditions.

It works as a jurisdictional entity for the sanctioning of anticompetitive practices, which consists of different stages, such as: investigation; evidence analysis; service of process; and trial resolution.

Additionally, the CRE is invested by the Hydrocarbons Law with power to apply penalties to permit-holders that do not adhere to the economic competition provision that such authority issues.

11.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the oil and natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

In Mexican regulations, there are concentrations that can be defined as merger, acquisition of control, or any act involving companies, associations, shares, social parties, trusts or assets, in general, which is to be made between competitors, suppliers, customers and/or other economic agents which are regulated by the Federal Competitions Law. Transactions which qualify as concentrations are:

- (i) Any acts that represent an amount equal to or greater than 18 million minimum wages in Mexico (USD\$70 million).
- (ii) Any acquisition of more than 35% of the capital stock of a company with total sales or assets in Mexico equal or greater than 18 million minimum wages in Mexico.
- (iii) Any acts resulting in the accumulation of more than 8.4 million minimum wages in Mexico (approximately USD\$33 million) in assets or stock, with the participation of economic agents that have, jointly or separately, sales or assets in Mexico with a value greater than 84 million minimum wages in Mexico (USD\$187 million).

Any of the abovementioned transactions must be approved by the COFECE, and the notification of concentration must be made to such authority.

The COFECE must verify that the transaction does not violate any free competition principles or the law.

12 Foreign Investment and International Obligations

12.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

There are no restrictions or limitations for foreign companies due to the recent amendments to the Foreign Investment Law.

12.2 To what extent is regulatory policy in respect of the oil and natural gas sector influenced or affected by international treaties or other multinational arrangements?

Mexico has entered into and ratified an international agreement with the United States of America related to cross-border hydrocarbon deposits in the Gulf of Mexico. This instrument sets forth collaboration measures between these two countries for certain offshore oil and gas reserves shared by these two countries. Mexico is not a part of a multinational arrangement, such as OPEC.

13 Dispute Resolution

13.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the oil and natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to oil and natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; downstream oil infrastructure owners or users; and distribution network owners or users in relation to the distribution/transmission of natural gas.

The model exploration and extraction contracts published by the CNH include some provisions regarding arbitration in accordance with the UNCITRAL rules for most disputes. An exception to arbitration in this type of contract is the provision for contract rescission by administrative authorities, which may be exercised if a rescission event arises.

For the purposes of an arbitration, the applicable law shall be Mexican Law, the arbitration procedure shall be held in Spanish language, the arbitration site shall be The Hague in the Netherlands, and the award shall be binding for both parties. Additionally, with regard to private contracts in regulated activities, the regulatory entities, such as the National Hydrocarbons Commission and the Energy Regulatory Commission, might be appointed as arbitrators for dispute resolution.

13.2 Is your jurisdiction a signatory to, and has it duly ratified into domestic legislation: 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 (“ICSID”)?

Mexico is part of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, without any reservation whatsoever, and has been since 1971; however, Mexico is not a member of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

13.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

It is not as common as it might be in other countries, though it is a practical issue, not a matter of law. The Commerce Code establishes in its Section IV of Title V, the applicable rules for arbitration agreements between the parties. Such Code prescribes that the award must be enforceable through Mexican jurisdiction authorities, regardless of the country in which the award was issued. Notwithstanding the aforementioned, Mexican judges are entitled by law to review the award and decide whether it complies with the provisions of Mexican law, with the possibility of a judicial revision to have final arbitration resolutions.

13.4 Have there been instances in the oil and natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

There have been few cases in which international judgments have

been resolved in favour of foreign companies against governmental authorities, as in the case between Pemex, a state-owned company, and Kellogg, Brown & Root (“KBR”) in which KBR was granted an award of USD\$465 million for terminating a contract in 2004. Pemex’s new legal organisation could lead to a more effective and efficient path for dispute resolution between a state-owned company and a private company.

14 Updates

14.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Oil and Gas Regulation Law in your jurisdiction.

The years 2015, 2016, and 2017 have been exciting for the oil and gas sectors in Mexico. The constitutional, legal and regulatory changes that derived from the Energy Reform have brought major investment in different sectors related to the energy industry in the country.

In accordance with the above, it is expected that in 2018 several major private brands will open their own gasoline stations throughout the country.

Furthermore, the CNH has announced the commencement of Round 3.1 for the awarding of new E&E onshore contracts. It will still take some time for hydrocarbons to be actually produced from these awarded blocks; however, it is a huge step to creating a competitive hydrocarbons extraction industry in Mexico.

Mexico’s recent reforms in different sectors are fostering a culture of compliance. An anti-corruption legal framework is being implemented through the General Law of Administrative Responsibilities, the General Law of the National Anti-corruption System and the Law of the Federal Court of Administrative Justice. Following the momentum set by these laws, Pemex and other state- and privately-owned companies have taken steps to create or adapt their conduct and ethical codes.

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Jesús Rodríguez Dávalos, founding member and Managing Partner of RDA since 1995, positioned RDA as a trending energy/infrastructure and consulting firm focused on the power, oil and gas sectors. His experience in strategic legal, business development and cross-cultural matters has allowed him to identify opportunities on behalf of his clients. He has led many first-of-a-kind projects: the first cross-border wet gas pipeline; the first CNG project; the regulatory strategy of the first ethane pipeline; and the only three private LPG pipelines in operation, among others. He was leading legal counsel of "Los Ramones" in its three phases. He has represented natural gas distribution companies since 1995; since 2000, he has advised independent power generation companies (IPP, Cogen plants and renewable energy projects) in Mexico and in Central America, representing more than 5,000 MW of installed capacity. He represents: more than 16 E&P Blocks; right of way acquisition of over 5,500 km for pipeline and transmission lines; more than 2,500 gasoline retail stations; an LNG facility in the Gulf of Mexico; and product refining terminals. Mr. Rodriguez and his team recently worked with Pemex to obtain permits and regulated tariffs for eight transportation systems for oil, refined products and petrochemicals, as well as those for 77 petrochemical and oil product storage facilities.

**Raúl Fernando Romero Fernández**

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Raúl Fernando Romero Fernández, Senior Associate at RDA, has participated in strategic projects on distribution, transportation and storage of hydrocarbons. He successfully developed and negotiated the agreements of the First Operative Natural Gas SWAP in Mexico, as well as the customs strategy. Mr. Romero developed and negotiated contracts for the first private ethane pipeline in Mexico. He also had an outstanding participation in the execution of TSA, O&M and EPC and in the general contractual scheme of all three phases of the "Los Ramones" pipeline and Transoceanic Project. He played a key role in the negotiation and preparation of incentivised agreements and hydrocarbon purchase agreements. He recently had an outstanding participation in the regulatory and legal strategy of the first private terminal of refined products in Mexico.

He has successfully executed NAESB agreements for power generating companies and independent power producers (natural gas distributors and industrial clients) in Mexico. Mr. Romero has developed and executed contracts of regulated activities for power generating projects such as combined cycle and Cogen projects. He has led companies on bidding processes before CFE, the Federal District government and Pemex.



Rodríguez Dávalos Abogados ("RDA") is a specialised law firm with more than 20 years of accumulated experience, and with national and international regulatory and commercial expertise in the energy industry. RDA has highly skilled attorneys and consultants with practice not only in the Oil, Gas, and Power Industries, but also in Corporate Law, Mergers and Acquisitions, Banking, Finance, Foreign Investment, Procurement, Government Contracts and Public Works, Commercial Matters, Industrial Property and Rights of Way ("ROW"). The firm's overall projects represent national and foreign investments of over USD\$5.5 billion.

RDA has a very substantial and proven record in infrastructure projects (natural gas, LPG, LNG, crude oil E&P, basic petrochemicals, sulphur, gas and liquids transportation pipelines, fuel management projects and business development, cross-border transactions, finance and credit facilities, guarantees, risk management mechanisms and techniques, Mexican, U.S., and international industry standards and best practices, purchase and sale agreements, transportation, storage, and exchange agreements, maritime trade agreements, and corporate governance, administration and counselling). RDA is skilful in completing agreements with the Energy Regulatory Commission ("CRE"), *Petróleos Mexicanos* ("Pemex") and its subsidiaries, the Ministry of Energy, and the Federal Electricity Commission ("CFE"), in all stages: (i) planning; (ii) development; (iii) negotiation; (iv) operation; and (v) management.

RDA is deeply engaged in offering value-added and integrated services to our clients to successfully achieve and develop projects as well as in rendering the most-qualified representation.

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