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# AMENDMENT TO MEXICO POWER INDUSTRY LAW: CHANGE OF LAW PROVISIONS

*On February 1, 2021, the President of the Mexican United States, Mr. Andrés Manuel López Obrador, announced a fast-track legislative proceeding to amend the Power Industry Law ("Ley de la Industria Eléctrica"). On March 2, 2021, the amendment was approved by both chambers of the Mexican Congress. This will affect several aspects of commercial agreements.*

## BACKGROUND

Mexican Congress amended the Power Industry Law, which was originally enacted on August 11, 2014 as a product of the so-called Mexican Energy Reform. The Mexican Energy Reform started in 2013 with the amendment to articles 25, 27, and 28 of the Mexican Federal Constitution, which, with regard to electricity industry, liberalized both (i) power generation and (ii) power supply to free competition from private investors.

This meant that the federal power utility, called CFE or "*Comisión Federal de Electricidad*," after 70 years of monopolistic activities, was forced to compete with private investments (both domestic and foreign). Under the Power Industry Law, between 2014 and 2020, Mexico received several billions of investments in power generation, particularly renewable.

The amendment introduces important changes to: (i) the continuity of power generation permits granted by the Mexican Energy Regulatory Commission ("*Comisión Reguladora de Energía*"); (ii) the power dispatch rules of generation plants, favoring those of CFE; and (iii) modify the free competition rules of both power generation and power supply.

## IMPACT

Aside from legal defenses under the Mexican legal system and even under investment protection agreements or commercial international treaties, one important aspect to consider is the impact that the amendment will have on a short or medium term under several agreements, such as Power Purchase Agreements; Hedge Power Agreements; Engineering, Procurement and Construction Agreements; Finance Agreements; Land Use Agreements; and many other ancillary service agreements.

Under such a scenario, a case-by-case analysis of the clauses that may be impacted by the amendment shall be made (such as change of law, force majeure, and early termination clauses) to determine the possible actions that can be undertaken by the parties to minimize the adverse effects that the amendment to the Power Industry Law may have on the day-to-day performance of such agreements.

For example, if under the amended law a power generation permit is denied by the Mexican Energy Regulatory Commission and, as a result, the Commercial Operation Date cannot be achieved,

such circumstance may trigger a cross default under different agreements, including the Finance Agreements, which may trigger step-in rights and accrual of greater interests in favor of creditors, and Power Purchase Agreements, which may cause payment of liquidated damages. However, if Commercial Operation Date has already been achieved but the power supply is hindered due to the new dispatch rules, then such circumstance may cause an event of default under the Power Purchase Agreements.

Regardless of the immediate legal actions the parties may undertake in protection of their interests, when it comes to these type of projects, the parties should strive to find and negotiate a long-term solution since the greater benefit for all involved will come from the project's actual operation and exploitation.

If you have any questions, please do not hesitate to contact the Thompson & Knight attorney with whom you regularly work or one of the attorneys listed below.

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