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THE YEAR IN REVIEW
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Mexico

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I. Introduction

2014 has been an auspicious year in Mexican law. Reforms to the energy and agricultural sectors, new money laundering statutes, developments in telecommunications, the implementation of oral trials, the integration of human rights regimes, and new open government policies, among other developments, have made Mexico's legal landscape as diverse as any in the world. These reforms are aimed at integrating Mexico more fully into the global marketplace, and making substantial efforts at integrating human rights, government access, and anti-corruption efforts part of the established legal regime.

With respect to the energy sector, President Enrique Peña Nieto signed into law the twenty-one component parts of a comprehensive energy reform years in the making. Eight months after introducing constitutional amendments to radically transform Mexico's hydrocarbon and electricity sectors, private investors may now begin new developments. Further agricultural reform is both an exciting and potentially divisive area of law

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as modern agriculture competes with Mexico's traditional communal land practices. The energy and agricultural sectors have been heavily regulated in the past, and any attempts to reform these sectors will have a tremendous impact on Mexican society. Complementing these reform efforts in the energy and agricultural sectors are attempts to open competition among Mexican and foreign companies, and eliminate money laundering from the marketplace. Exciting changes in telecommunications laws, for example, have allowed for greater competition.

Additionally, changes in Mexican jurisprudence have allowed for the implementation of oral trials in Mexico's judge-based system. This change, along with regulations allowing for open government, political and electoral reform, and the integration of human rights regimes into Mexican law, will grant Mexican citizens a greater voice in how the court system is run and justice is distributed. New constitutional protections to children and the environment demonstrate Mexico's ongoing concern for its most valuable natural resources.

II. The Great Agricultural Reform

On January 6, 2014, President Peña Nieto announced the great agricultural reform.[1] President Peña Nieto said that a significant transformation in the agricultural sector legal framework would take place in 2014 by means of farmers' organizations and dialogue with legislators. He said that a modern and successful countryside is "essential" to achieving a prosperous nation, and that he will be a permanent ally of the agricultural sector so that farmers may reach dignified living conditions.

Agricultural reforms have yet to become a reality, but President Peña Nieto's announcement has sparked intense debate regarding the future of communal lands. Full private property ownership is regulated at the local level, while the administration of the communal lands is regulated at the federal level. There have always been differing opinions regarding communal property. Some question why these agricultural communities continue to exist. There are three clear reasons. The first reason is historical and intrinsic to Mexico. Social ownership existed in Mexico long before the Spanish arrival, and prior to the conquest of Mesoamerica. This regime was formally respected by the Spanish Crown, and lasted throughout the colonial period, during independence, the Porfiriato era, and was consolidated in the agricultural reform of 1915.

The second reason is derived from the social function of property established in the Constitution of 1917, a constitutional principle brought to fruition through the enactment of the equitable distribution of public wealth rule.[2] This redistribution granted rural farmers certain property rights in order to provide them with a livelihood, and allowed communal lands to be re-established.

The third reason is the economic function of property. Under Article 27 of the original Constitution, every owner was forced to work towards a social benefit, and land could not

1. *See* Oscar Lopez, *Mexican President Announces Agrarian Reforms: 2014 Will Be 'Year of the Field'*, LATIN TIMES (Jan. 6, 2014, 9:04 PM), http://www.latintimes.com/mexican-president-announces-agrarian-reforms-2014-will-be-year-field-142812.

2. *See* Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 27, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

be left idle.[3] Today, more than 50 percent of the national land ownership is communal.[4] This fact obliges the State to respect that history and the constitutional principles that consolidated and formed these communities prior to making any changes.

III. Oral Trials in Mexico

After centuries of conducting trials under a mixed-inquisitorial system, Mexico has shifted to an accusatorial system. The incorporation of this new paradigm aims to achieve a more fair administration of criminal justice.

In 2008, statistics showed that 85 percent of crime victims refused to testify because 98 percent of felonies went unpunished and the proceedings were frequently slowed, postponed, and delayed.[5] Moreover, most judges were not present during hearings, and the general assumption was that anyone could be corrupted.[6] The most important part of the reconstruction of the criminal system will be the introduction of oral trials.

In oral trials, judges will see and hear the evidence during public hearings, and defendants will be able to challenge abusers in a meaningful manner. Confession will no longer be the key component of a prosecution, as more weight will be given to scientific evidence and truthful testimony.

To date, only four out of the thirty-three jurisdictions are fully operational under the new model.[7] The deadline for all of the jurisdictions to implement the new law is June 2016. To assist in this process, Congress adopted a unified, single code for the entire country in March 2014.[8] This new criminal code is a major step towards the full implementation of the new system.

In order for the adversarial process to succeed, there must be a serious commitment towards the professionalization of all law enforcement bodies and meaningful training for legal professionals. All thirty-three jurisdictions have created public offices specifically entrusted with the task of coordinating with public and private institutions in their efforts to implement the accusatorial system, all under the control of a national secretariat (SETEC). Such entities advise and oversee the construction of proper facilities and the incorporation of state-of-the-art information technology for oral proceedings, as well as training in the new national code.[9]

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3. *See id.*

4. Jaime Andrés de la Llata Flores, *The Social Property in Mexico* (2004), http://www.nass.usda.gov/mexsai/Papers/socialpropertyp.pdf.

5. PRISMA Consulting Latinoamérica, Juicios Orales en México (2011), *available at* http://prismamx.net/pdfs/juiciosorales.pdf

6. *See generally* Transparency Int'l, http://www.transparency.org (last visited Apr. 4, 2015).

7. *See* Clare Ribando Seelke, Cong. Research Serv., R43001, Supporting Criminal Justice System Reform in Mexico: The U.S. Role 9 fig.2 (2013).

8. *See Mexico Enacts Uniform Criminal Procedure Code for the First Time in its History*, Mex. Gulf Rep. (Mar. 5, 2014), http://www.mexicogulfreporter.com/2014/03/mexico-enacts-uniform-criminal.html.

9. *See generally* Secretaría Técnica del Consejo de Coordinación para Implementación del Sistema de Justicia Penal [SETEC], http://www.setec.gob.mx (last visited Apr. 4, 2015).

IV. Energy Reform

On August 7, 2014, the Mexican Congress approved a set of bills that contain legislation to enact reforms to the energy sector.[10] The most important new legislation includes:

A. PEMEX Entitlements. The Ministry of Energy (SENER), with technical assistance from the National Hydrocarbons Commission (CNH), will grant Petróleos Mexicanos (PEMEX) "entitlements" to perform upstream activities in specific areas, provided it has the sufficient technical, financial, and performance capacity to undertake the activities required for each entitlement.

When performing works under any entitlements, PEMEX may work with the private sector through service and supply schemes. PEMEX may lose its entitlements through relinquishment or revocation by SENER for cause, however. The relinquished or revoked entitlements may be awarded to private companies by public bids, as determined by SENER.[11]

B. Private Sector Participation. As a result of the reforms, the private sector will be allowed to participate in competitive bids for upstream activities (i.e., the exploration and exploitation of oil and gas), either directly, through production-sharing agreements, profit-sharing agreements, or licenses, or indirectly, by means of a joint venture with PEMEX or service and supply agreements. The CNH may enter directly into any of the abovementioned contractual schemes with private sector companies.[12]

C. Booking of Reserves. PEMEX and private sector companies performing upstream activities under entitlements, as well as under contractual and licensing schemes, may book or report reserves, for accounting and financial purposes, provided the underlying documents clearly specify that underground hydrocarbons remain the property of Mexico.[13]

D. National Content. Beginning in 2015, companies involved in upstream activities will be required to comply with a minimum requirement for national content of 25 percent when performing such activities, except in deep and ultra-deep water operations where national content percentage will be determined by Mexico's Ministry of Economy. The national content percentage will be gradually increased until it reaches a minimum of 35 percent in 2025.[14]

E. Tax Framework. Companies performing upstream activities will be subject to Mexico's general tax framework.

F. Authorities. The most relevant governmental authorities in upstream activities are: (1) SENER, which is charged with selecting areas or fields for private sector participation, among other things; (2) the Ministry of Finance, which is charged with laying out economic and consideration aspects that will apply to public bidding processes, contracts, and licenses; and (3) CNH, which is charged with providing technical assistance to SENER,

10. *See* Decreto por el que se expide la Ley de Hidrocarburos y se reforman diversas disposiciones de la Ley de Inversión Extranjera; Ley Minera, y Ley de Asociaciones Público Privadas [Decree on the Hydrocarbons Law], Diario Oficial de la Federación [DO], 11 de Agosto de 2014 (Mex.).

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* transitorios 24.

organizing and calling public bids, awarding and executing public contracts, and determining general rules and guidelines for upstream operations.

G. Mexican Oil Fund. The "Mexican Oil Fund for Stabilization and Development" will be a sovereign fund of Mexico created by the Ministry of Finance as settlor and the Mexican Central Bank as trustee. Its main purpose is to receive, manage, and distribute income that results from PEMEX entitlements, and licenses and contractual schemes in upstream activities. The proceeds received by the Mexican Oil Fund will be used to pay private contractors of upstream activities, fund specific projects and funds, cover a portion of Mexico's public expenditure, and invest in long term savings.

H. Private Sector Participation. Midstream activities (e.g., storage, pipelines, and bulk transport) and downstream activities (e.g., refining, processing of raw natural gas, and marketing and distributing products derived from crude oil and natural gas) may be performed by private sector companies through the issuance of permits authorized by SENER or the Energy Regulatory Commission (CRE), depending on the activity. Registration with the CRE is only necessary for the marketing of crude or refined oil products and gas.

I. Gasoline & Diesel Markets. Permits for the sale of gasoline and diesel by private sector companies will be authorized after January 1, 2016.[15] Prior to December 31, 2016, PEMEX will be the only company authorized to import gasoline and diesel; thereafter, the CRE will grant permits to private sector companies.[16]

J. Asymmetric Regulation for PEMEX. In order to procure a balanced oil and gas market, CRE will subject the first-hand sale of oil and gas and its derivatives to asymmetric regulation principles in order to limit PEMEX's dominant position.[17] Asymmetric regulation principles are also meant to foster efficiency and competitiveness by allowing new players to participate in the oil and gas and derivatives markets.

K. New Regime for PEMEX. PEMEX and CFE will be transformed into productive companies that are owned by the Mexican State and will be participants in the oil and gas and electricity markets with non-regulatory roles, specific mandates, and preferential treatment in some activities. There will be a transitional period to allow a seamless transition of PEMEX and CFE into their new roles as productive state-owned companies. Regulatory and market coordination roles will be transferred to SENER, CNH, CRE, and the National Energy Control Center, among others.[18]

L. Labor Unions. Based on the number of employees and other factors specified by law, private participants in the oil and gas sector may be required to enter into collective bargaining agreements with labor unions. PEMEX's union will have no exclusivity over other unions to enter into collective bargaining agreements with private companies.[19]

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15. *Id.* transitorios 14.

16. *Id.*

17. Francisco Barnés de Castro, *The Paradigm Change in the Mexican Hidrocarbons Sector*, BECOME KINETIC (Jan. 25, 2015), *available at* http://www.becomekinetic.com/img/Barnes%20The%20Paradigm%20Change%20in%20the%20Mexican%20Hydrocarbons%20Sector.pdf.

18. *Id.*

19. *Mexico Enacts Uniform Criminal Procedure Code for the First Time in its History*, *supra* note 8.

V. The Competition Law

On July 7, 2014, the "Competition Law" entered into force.[20] The Competition Law maintains most of the concepts and provisions of the Competition Law that has been in force since 1993, while strengthening the Federal Economic Competition Commission (COFECE). The new law introduces novel concepts aimed at increasing competition in all product and service markets. It represents a radical change in Mexican antitrust policy and is intended to generate competition in an open market economy.

The first accomplishment of the Competition Law is the creation, within COFECE, of an "Investigating Authority" to strengthen its investigatory authority and practices. The Investigating Authority is responsible for conducting investigations into monopolistic practices and illegal concentrations. The limitations period to file a claim for damages will be tolled by the commencement of an investigation. The goal of this reform is to increase the likelihood of success in private actions for damages. These private actions may be styled either as individual actions or as class (collective) actions.[21]

COFECE's investigation will serve as the basis for processing complaints before federal courts specializing in economic competition issues, and will be used to prove the illegality of the conduct (e.g., engaging in the monopolistic practice or the prohibited concentration). Under the Competition Law, COFECE will now be obligated to respond to requests for rulings and to issue general guidelines on free competition matters upon request by private parties.

On the cartel side, exchange of information between competitors has been defined as an independent monopolistic practice when such exchange results from, or if the purpose of which is, any of the other conducts classified as absolute monopolistic practices (i.e., price-fixing, supply restriction, market division, or bid-rigging). Exchange of information was also incorporated as a criminal offense in the Federal Criminal Code; this crime does not require proof of intent. Individuals involved in these exchanges of information now face severe consequences; for example, up to ten years of imprisonment.[22]

COFECE now has the authority to conduct studies in market power and to then order measures to eliminate "barriers to free competition," including ordering the divestiture of assets. As in the case of essential inputs, there is no precise definition of "barriers to free competition," and the Competition Law indicates only that they may be: any structural characteristics of the market, facts or acts of economic agents with the purpose or effect of impeding competitors' access or limiting their ability to compete in the markets; those that impede or distort the free competition process; and any legal provisions issued by any level of the Government that unduly impede or distort the free competition process.[23]

The most relevant change to merger control regulations in Mexico is the migration to a suspensory merger control regime. This change eliminates COFECE's limit on issuing stop orders only for those transactions representing potential risks to the competition process. Under the Competition Law, all transactions must now wait to obtain clearance

20. Decreto por el que se expide la Ley Federal de Competencia Económica y se reforman y adicionan diversos artículos del Código Penal Federal [Decree on the Competition Law], Diario Oficial de la Federación [DO], 23 de Mayo de 2014 (Mex.).

21. *Id.*

22. *Id.* art. 254a.

23. *Id.* art. 3.

before closing—even those transactions where it is evident that there will be no harm to the affected markets. Closely related to the foregoing reforms is the extension of the resolution period from thirty-five business days to sixty business days.[24]

The merger control thresholds have also been modified to consider only annual sales originated in Mexico and/or assets in the Mexican territory of the parties, instead of such amounts at a global level. Additionally, the regulatory burdens for the parties have been increased. For example, additional elements have been incorporated into the list of "basic" information required. Moreover, COFECE has been authorized to require information at any stage during the merger process, terms to require information have been extended, and additional formal requirements have been set for documents and translations.

VI. The Mexican Anti-Money Laundering Statute

On October 17, 2012, the Federal Statute for the Prevention and Identification of Transactions with Illicit Resources (the Statute) was published and enacted.[25] On July 17, 2013, the Statute came into effect. It is designed to protect the Mexican economy through the establishment of measures and procedures that will prevent and detect transactions involving unlawful resources. The main governmental authorities on the subject are the Ministry of Treasury and Public Credit (Hacienda) for the general application and enforcement of the Statute; the Attorney General's Office through the Special Unit of Financial Analysis, which focuses on money laundering transactions; and the Financial Intelligence Unit, which acts as a general prosecutor.

Operations that engage in criminal offenses punishable by the Federal Penal Code (e.g., terrorism, and financing terrorism)[26] often engage in money laundering through the financial system. Pursuant to the Statute, such non-financial activities[27] are identified as "Vulnerable Activities." When a person or entity performs a Vulnerable Activity, it is then obligated to maintain certain information for its files (primarily "Know Your Customer" information, or KYC)[28] that shall made available to the authorities for at least five years. Entities engaging in Vulnerable Activities must also appoint a responsible representative to Hacienda.[29]

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24. *Id.* art. 90.

25. Decreto por el que se expide la Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita [Decree on the Federal Statute for the Prevention and Identification of Transactions with Illicit Resources], Diario Oficial de la Federación [DO], 17 de Octubrede 2012 (Mex.).

26. *See* Código Penal Federal [CPF] [Federal Criminal Code], *as amended*, arts. 400 bis–400 bis 1, 139–139 quinquies, 148 bis–148 quarter, Diario Oficial de la Federación [DO], 14 de Agosto de 1931 (Mex.).

27. Although Financial Entities and their activities are also regulated by the Statute, those entities are regulated by a specific chapter.

28. *See* Decree on the Federal Statute for the Prevention and Identification of Transactions with Illicit Resources, art. 18; Reglamento de la Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita [Regulations for the Federal Statute for the Prevention and Identification of Transactions with Illicit Resources], arts. 12–20, Diario Oficial de la Federación [DO], 16 de Agosto de 2013 (Mex.).

29. In the event that a responsible person is not appointed by the entity, such function shall fall upon the manager(s) of the entity.

Moreover, if the Vulnerable Activities transaction involves an amount over certain thresholds[30] (or if a group of transactions of the same nature accrue an amount that exceeds or equals such thresholds),[31] it will be identified and reported[32] through a special website established by Hacienda.[33] The Financial Intelligence Unit has authority to gather information that it considers useful in identifying and preventing money laundering operations.

Perhaps the most remarkable consequence of the Statute's enactment in business circles has been the limitations that it represents for several industries. For instance, brokers, property managers, real estate developers, notaries public, and any other persons involved in the real estate sector must now satisfy several formalities and gather certain information before entering into a transaction. These requirements have inaugurated a general "slow down" in the operation of real estate properties.

Another sector that has been significantly impacted by the Statute is the jewelry business. Prior to the enactment of the Statute, transactions involving jewels were a common and accepted practice. Because the Statute bans the use of jewelry to satisfy obligations, this market has now been dramatically restricted (if not completely extinguished).

All notices of Vulnerable Activities shall be submitted not later than the seventeenth calendar day of the month following the occurrence of the Vulnerable Activity.[34] Coincidently, this is the same due date for the filing of monthly tax returns.

Cash transactions are also limited by the Statute; they are no longer allowed above certain thresholds for operations in certain areas, such as real estate, *in rem* rights, and vehicles.

Violations of the Statute may give rise to administrative and criminal sanctions including fines, minimum wages, revocation of licenses to notaries public and commercial public brokers, and up to twenty years of imprisonment. Punishments will vary according to the circumstances, the type of infringement, and other contextual elements. The economic sanctions and criminal liabilities are significant deterrents, as is the fact that violations of the Statute create an undesirable background for entities and individuals before Hacienda.

Criticism of the Statute arose in economic circles because of the heightened administrative burdens that it creates for the normal day-to-day operation of businesses. Although the Statute came into force on July 17, 2013, as of September 2014 several entities and individuals are still in the early stages of adopting its requirements and are currently seeking to abide by it and its secondary regulations.

The obligations contained in the Statute have also had an effect on commercial transactions. While Mexico's international reputation in terms of regulation against money laun-

30. Decree on the Federal Statute for the Prevention and Identification of Transactions with Illicit Resources, art. 17.

31. Regulations for the Federal Statute for the Prevention and Identification of Transactions with Illicit Resources, art. 7.

32. Decree on the Federal Statute for the Prevention and Identification of Transactions with Illicit Resources, arts. 17–18.

33. *Portal de Prevención de Lavado de Dinero [Portal for the Prevention of Money Laundering]*, SECRETARÍA HACIENDA & CRÉDITO PÚBLICO, https://sppld.sat.gob.mx/pld/interiores/sppld.html (last visited Apr. 5, 2015).

34. Decree on the Federal Statute for the Prevention and Identification of Transactions with Illicit Resources, art. 23.

dering activities has improved, the regulatory limitations have caused difficulties for those who perform Vulnerable Activities as a core business. As a point of comparison, the Statute contains at least 120 more provisions than the laws of the United States. Sales and operations have been significantly reduced in the face of the aforementioned limitations.[35]

VII. Mexican Telecommunications Developments

A 2013 constitutional amendment[36] initiated a transformation of the telecommunications and broadcasting industries. The reforms have been further accomplished through the adoption of the new Federal Telecommunications and Broadcasting Law (TBL), published on July 14, 2014.[37] Effective as of August 13, 2014, the TBL repealed both the Federal Telecommunications Law (FTL) and the Federal Radio and Television Law. The TBL implemented and expanded the constitutional amendment concerning the telecommunications and antitrust legal framework adopted in June 2013. Among other things, the TBL (1) states the Federal Institute of Telecommunications' (IFT's) powers, (2) establishes access and interconnection procedures, and (3) defines a preponderant economic agent's obligations along with its asymmetric regulation.

Article 7 of the TBL reaffirmed provisions set out in the 2013 constitutional amendment, such as IFT's autonomy through its juridical personality and own patrimony. Article 7 also reaffirms IFT's role in the promotion and regulation of all broadcasting and telecommunications matters, including IFT's exclusive exercise of authority in antitrust matters affecting both markets. In particular, IFT will exercise its exclusive authority affecting antitrust matters under its jurisdiction with respect to the provisions of Article 28 of the Constitution, the TBL, the Federal Competition Law, and other applicable regulations.[38]

Article 129 of the TBL provides the rules necessary to achieve network access and set interconnection rates between telecom operators following a two-step procedure: (1) holders of licenses to public telecommunication networks shall interconnect their networks, and to this end shall reach an agreement within sixty calendar days from the date of a request; and (2) if said term has elapsed and the parties have not executed an agreement, the interested party shall request IFT to rule on the interconnection rates, conditions, and terms not agreed with the other party.[39]

Proceedings related to interconnection matters before the IFT can be terminated by either (1) the IFT's decision on interconnection matters which shall be issued no later than thirty working days from the parties' deadline to make allegations[40] or (2) before IFT issues a decision on the dispute, by the parties' IFT- ratified agreement. According to

35. *See* Jesús Vásquez, *Ley Antilavado en México, Más Rigurosa que la de EU [Money Laundering Law in Mexico, More Stringent than US]*, ECONOMISTA (Aug. 6, 2014), http://eleconomista.com.mx/sistema-financiero/2014/08/06/ley-antilavado-mexico-mas-rigurosa-que-eu.

36. *Decreto por el que se reforman y adicionan diversas disposiciones de los artículos 6o., 7o., 27, 28, 73, 78, 94 y 105 de la Constitución Política de los Estados Unidos Mexicanos, en materia de telecomunicaciones* ("Decreto"), DIARIO OFICIAL DE LA FEDERACIÓN [DO], 11 de Junio de 2013 (Mex.).

37. Ley Federal de Telecomunicaciones y Radiodifusión [LFTR] [Telecommunications and Broadcasting Law], *as amended*, Diario Oficial de la Federacíon [DO], 14 de Julio de 2014 (Mex.).

38. *Id.* at Art. 128.

39. *Id.* at Art. 129, sec. VI.

40. *Id.*

Article 129, paragraph 2, section IX, the IFT's decision on interconnection rates will be effective no later than thirty days from the day after either notification of the IFT's decision or the parties' ratification of an agreement before the IFT.[41] Telecom operators that fail to comply are subject to the IFT's power to apply sanctions. The IFT's interconnection decisions can be appealed only through a claim of "indirect *amparo*," which does not suspend the regulatory decision during the pendency of the *amparo* proceeding before the court.

The TBL confirms the IFT's ability to impose asymmetric obligations on any operator found to be "preponderant" in each of the telecommunications or broadcasting sectors. "Preponderant" economic operators are defined in Article 262 of the TBL as operators in the telecommunications or broadcasting sectors which hold a national participation rate that exceeds 50% of users, subscribers, audience, traffic on its networks or used capacity thereof.[42]

Among the most important obligations the IFT can impose on preponderant telecom operators are the following:[43] (1) obligations to provide interconnection on a non-discriminatory basis, (2) unbundling local loop services, (3) infrastructure sharing, and (4) the obligation to obtain IFT's prior approval for all service pricing to consumers.

As already shown in its March 2014 decisions, the IFT has the power to determine preponderant economic operators in the telecom and broadcasting sectors and to impose asymmetric interconnection rates on them. First, in the decision of March 6, 2014, the IFT determined that Telmex, Telnor, and Telcel were preponderant economic operators in the telecom sector.[44] Second, in the decision of March 26, 2014, a plenary gathering of the IFT set the asymmetric interconnection rates applying to telecom preponderant economic operators,[45] which will remain in effect from April 6 until December 31, 2014.[46] However, the new TBL goes further by stating that a preponderant economic operator does not have the right to charge for termination of traffic in its own network.[47] Therefore, calls originating from non-preponderant operators calls completed in the preponderant operators' networks are not subject to interconnection charges at all.

Although the purpose of Article 131 of the TBL is to unravel the highly concentrated Mexican telecom market and to foster competition by imposing a zero interconnection rate for calls completed in the preponderant operators' networks, Article 131 may be subject to constitutional challenge. Indeed, Article 131 subtracts from IFT the constitutional power of imposing measures on preponderant economic operators to avoid results affecting competition—including asymmetric interconnection rates—assigned to the new regu-

41. *Id.*

42. *See*, *supra*, note 16.

43. *See*, *supra*, note 16.

44. Instituto Federal de Telecomunicaciones, *De la Sesiòn del Pleno del Instituto Federal de telecomunicaciones en su V Sesiòn Extraordinaria del 2014, Celebrada el 6 de Marzo de 2014* [Plenary session of IFT Committee at its V Extraordinary Session] (Mar. 6, 2014), *available at* http://apps.ift.org.mx/publicdata/P_IFT_EXT_060314_76_Version_Publica_Hoja.pdf.

45. Instituto Federal de Telecomunicaciones, *Acuerdo Mediante el cual el Pleno del Instituto Federal de telecomunicaciones determinas las tarifas Asimétricas por los servicios de Interconexión que cobrará el agente económico preponderante*, (Mar. 26, 2014), *available at* http://apps.ift.org.mx/publicdata/P_IFT_260314_17.pdf

46. Press Release, América Móvil, América Móvil Informs (March 31, 2014), *available at* http://www.americamovil.com/mailing/AMX_about_IFETEL.pdf.

47. TBL, *supra* note 38 at Art. 131, sec. a.

latory authority by Mexico's Constitution. Therefore, Article 131 may violate IFT's autonomous constitutional power to set asymmetric interconnection rates on preponderant economic operators.[48] IFT's constitutional power has already been exercised by the new regulatory authority through setting the asymmetric interconnection rates applying to preponderant economic operators in the decisions of March 6 and March 26, 2014.[49]

While the procedure of leaving IFT free to decide whether imposing a zero interconnection rate or fixing asymmetric interconnection rates on an agent with substantial power respects IFT's constitutional powers to encourage competition by imposing either fair or cost-based asymmetric interconnection rates, the same may not be asserted for the mandatory statutory zero interconnection rate applied on a preponderant economic agent through Article 131, section (a) of the TBL.

As a result of the new, strong regulatory powers enjoyed by the IFT, the América Móvil Group has declared its intention to divest subscribers and assets to reduce its market share below 50% in order to avoid the stringent dominant operators asymmetric regulation set by the FTL.[50]

The new TBL seems to be the cure for the highly concentrated Mexican telecom market because, along with the Telecom Constitutional reform, it promotes conditions enabling the entry of new telecom operators and fostering competition, to the benefit of Mexican consumers.

VIII. Recent Developments in Human Rights Law

The Supreme Court of Justice published two important human rights rulings on April 2, 2014.[51] The first ruling declares that the human rights regime contained in the Constitution and in international treaties constitutes the controlling parameters of constitutional law. In accordance with these new criteria, the validity of norms and the acts of authority that form part of the Mexican legal system must be analyzed. This ruling also establishes that when the constitutional standard sets an express restriction on the exercise of human rights, the constitutional standard prevails. In other words, the constitutional restriction will prevail even if it is more harmful to the person.

The second important ruling found that decisions issued by the Inter-American Court of Human Rights is binding on Mexican judges, whenever such a ruling is more favorable to the person. Additionally, whenever possible, Mexican jurisprudence should be harmonized with the Inter-American Court's case law. When this is not possible, the applicable standard should be that which offers a greater protection to human rights.

48. Decreto, *supra* note 6, at transitory art. 8.

49. Instituto Federal de Telecomunicaciones, *De la Sesiòn del Pleno del Instituto Federal de telecomunicaciones en su V Sesiòn Extraordinaria del 2014, Celebrada el 6 de Marzo de 2014* [Plenary session of IFT Committee at its V Extraordinary Session] (Mar. 6, 2014), *available at* http://apps.ift.org.mx/publicdata/P_IFT_EXT_060314_76_Version_Publica_Hoja.pdf.

50. Press Release, América Móvil, América Móvil Informs (July 8, 2014), *available at* http://www.americamovil.com/mailing/AMX_Strategic_Committee.pdf.

51. 10th Registration: 2006224. Instance: plenary session. Type of thesis: jurisprudence. Source: Gazette of the Federation Judicial Weekly. Book 5, April 2014, Topic I. subject (s): constitutional. Thesis: P. / j. 20/2014 (10a). Page: 202. (Thesis 293/2011 (ruling of September 3, 2013)).

The rulings are contradictory. The Supreme Court has implicitly held that the Mexican Constitution may restrict human rights—even when these rights are recognized internationally. At the same time, the Supreme Court explicitly supports the obligatory nature of human rights law as laid out by the Inter-American Court of Human Rights (IACHR). This approach is inconsistent with the Inter-American system of human rights protections, of which Mexico is a member. While the Supreme Court rulings place internationally recognized human rights law on par within the Mexican Constitution, they also declare that these rights can be restricted by the Constitution itself. In addition, while the Supreme Court established that IACHR rulings are always binding, it remains unknown how the legal precedents established by the IACHR will relate to state constitutions.

IX. Constitutional Guarantees on the Rights of Girls, Children, and Adolescents

In November 2014, the Mexican Senate overwhelming approved eighteen amendments to the General Law on the Rights of Girls, Children, and Adolescents (the General Law). These amendments reform various provisions of the General Law and provide for services for the care of minors.[52]

The General Law is intended: (1) to recognize girls, children, and adolescents as rights holders; in accordance with the principles of universality, indivisibility, and interdependence referenced in Article 1 of the Mexican Constitution; (2) to guarantee the full exercise, respect, protection, and promotion of the human rights of children and adolescents in accordance with the Constitution and international treaties; (3) to create and regulate integration, organization, and functioning of the national system for a comprehensive approach to the protection of the rights of girls, children, and adolescents, so that the State meets its responsibility to guarantee protection, prevention, and restitution; (4) to establish the managing principles and criteria that guide the national policy in the field of the rights of children and adolescents; and (5) to establish the general basis for the participation of private and social sectors in actions aimed at the protection and exercise of the rights of children and adolescents.[53]

The General Act requires government authorities to take all necessary actions and appropriate measures in decision-making where the interests of children and adolescents are involved. This means that when different options arise, the authorities must choose the option that more effectively applies the guiding principle of human rights granted to children, girls, and adolescents in the General Act.

The respective authorities shall also incorporate into their budgets a sufficient allocation of resources that would allow them to comply with the actions laid down in the new law. In the same way, the chamber of deputies of the Congress of the Union, the local Congress, and the Legislative Assembly of the Federal District will also budget resources from their respective budgets to comply with the actions laid down in the law.

52. Coordination of Social Communication. Senate of the Republica Comunicado-512. 6 de Noviembre de 2014, *available at* http://comunicacion.senado.gob.mx/index.php/informacion/boletines/16714-senadoras-especialistas-representantes-sindicales-y-academicos-abordan-el-tema-de-transparencia-sindical.html.

53. Article 1 of the General Act. Pages 198 and 199. Parliamentary Gazette, Legislative Palace of San Lazaro, Thursday, October 23, 2014, year XVII, number 4140-A. LXII Legislature, House of Representatives.

X. Electoral Reform

The electoral reform approved by the Mexican Congress in December 2013 and by a majority of the legislatures of the States in January 2014 was published in the official journal of the Federation (DOF) on February 10, 2014.[54] On February 10, the following thirty-one articles of the Mexican Constitution were reformed, added, or repealed: articles 26, 28, 29, 35, 41, 54, 55, 59, 65, 69, 73, 74, 76, 78, 82, 83, 84, 89, 90, 93, 95, 99, 102, 105, 107, 110, 111, 115,116, 119, and 122, as well as twenty-one transitory articles. The electoral reform law includes an important combination of institutions and topics of great importance for the State as a whole, and for the Federation, States (federal entities), the Federal District, and municipalities. Its main objective is to standardize the principles under which federal and local elections are organized, and thus to ensure greater certainty, security, and quality in Mexico's electoral democracy.

Institutions and subjects addressed in the constitutional reforms include: institutions and electoral procedures (e.g., the national electoral system, the national electoral institute, elections and the local government agencies in electoral matters, electoral justice, political parties, independent candidates, the re-election of legislators and city councils, integration of the local Congress and the legislature of the Federal District electoral crimes, government propaganda and other laws); the creation of the Office of the Attorney-General and the State Prosecutor's offices; matters related to the Executive Branch as to the taking of possession of presidential reports, the possibility of forming coalition governments and to restrict or suspend guarantees, as well as the new powers of the legal adviser of the Government; concerning the new powers and sessions of the Congress, the Chambers of the Senate and its deputies, and the repeal of a Standing Committee. It also includes reforms to the national system of planning and evaluation of social policy.[55] The constitutional reform also created a new governmental body called the National Electoral Institute (INE), which substitutes of the Federal Electoral Institute (IFE).

"The INE will be run by an advisory board with a Chairman and ten advisers, modeled after the college of justices in the Supreme Court of the nation." However, the treatment of the candidates who enroll in the convention will be assisted by an advisory body that consists of seven people, three appointed by the political leadership organ of the Chamber of Deputies, two by the national human rights commissions (CNDH) and two from the Federal Institute for Access to Public Information and Data Protection (IFAI).[56]

Additionally, the Electoral Reforms amended campaign-spending rules. "Something very important in these reforms is the control of expenses where the General Council of the INE determined the rules under which the control of expenditure relating to electoral 'pre-campaigns' and the process of obtaining citizen support will begin in 2014 . . . . The 'pre-campaigns' and the process of obtaining support citizen beginning in 2015, will be

54. DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia política-electoral [DECREE by amending, supplementing or repealing certain provisions of the Constitution of the United States of Mexico, in political-electoral matters], *as amended*, DIARIO OFICIAL DE LA FEDERACÍON [DO], 10 de Febrero de 2014 (Mex.).

55. *Id.*

56. *See* Decree amending political-electoral matters, *supra* note 52.

governed by the rules of control which were adopted by the General Council of the INE on November 19, 2014."[57]

The new electoral regulations related to campaign spending regulates the national system of accounting, the national registry of suppliers, approves the accounting and fiscal criteria for the whole country, and puts padlocks on the use of electronic purses through cash, travel expenses, and Repaps (receipts for political activities), among other things. It will have national scope and apply to parties, candidates, and independent candidates.[58]

To strengthen control procedures, the Commission's oversight, through the technical unit, will carry out the monitoring of newspapers, magazines, and other printed media, as well as general entertainment and the like, and will include enforcement tools and metrics.

On May 23, 2014, a General Law related to political institutions and electoral procedures was also published in the DOF, reforming the laws related to political parties, electoral offenses, and appeals in electoral matters.[59]

XI. Marine Waste Dumping Act

On January 17, 2014, a new law related to dumping of waste in marine areas (the Act) was published in the DOF.[60] The purpose of the Act is to control and prevent pollution or alteration of marine resources. Under it, the Secretary of the Navy is empowered to grant and cancel dumping permits, inspections, investigations, and issue reports and resolutions. The Secretary of the Navy is also empowered to make determinations and impose sanctions, set preventive measures, shooting ranges, and may also participate in national and international forums on dumping, among other activities. The Secretary of the Navy is empowered to implement preventive measures that will prevent pollution of the marine environment and has the authority to take immediate action in case of emergencies. The destruction and sinking of ships or aircraft, including their ammunition, are considered preventive measures.[61]

At the same time, the Secretary of the Navy is empowered to evaluate the source, conditions, and effect of shedding. The Secretary of the Navy has the authority to grant appropriate permissions to individuals or corporations of either Mexican nationality or foreigners who meet all requirements of law and who act in accordance with official Mexican standards, technical studies, and applicable scientific information.

The Act establishes the offenses, penalties, and procedures for violations. Article 37 provides that anybody who "dumps" in violation of the Act shall have the responsibility to remediate and repair any environmental damage to the marine environment, in addition

57. Instituto Nacional Electoral [National Electoral Institute], Agreement INE/CG203/2014 (General Council Agreement by INE in which accounting rules and oversight of primaries are determined in the electoral process 2014-2015) Sept. 25, 2014, *available at* http://portales.te.gob.mx/consultareforma2014/node/5683.

58. *See generally*, *id.*

59. Instituto Nacional Electoral [National Electoral Institute], Agreement INE/CG93/2014 (General Council Agreement by INE in which Transition Rules in the field of Auditing are determined.), July 9, 2014, *available at* http://norma.ife.org.mx/documents/27912/310245.

60. DECRETO por el que se expide la Ley de Vertimientos en las Zonas Marinas Mexicanas [DECREE on the Law of Dumping in Mexican Marine Zones is issued], *as amended*, DIARIO OFICIAL DE LA FEDERACÍON [DO], 17 de Enero 2014 (Mex.).

61. *Id.*

to any administrative, criminal, or civil sanctions that also require remediation and restoration of the site to its pre-dumping condition. Additionally, when remediation or restoration is not possible, violators will be responsible to pay the State sufficient compensation that will be quantified by the Secretariat on the basis of the allocation or damage to the marine environment.

XII. Constitutional Reform, Legal Transparency, and Access to Information

On February 7, 2014, the Mexican government enacted legislation that ensures transparent government to its citizens, and provides administrative procedures to enforce this right (the Transparency Act).[62] The Transparency Act reforms are enumerated as follows:

(a) All information in the possession of any authority, entity, or organ of the executive, legislative, and judicial branches, autonomous bodies, or politicians, or any person or entity that receives public resources to exercise or perform acts of public authority at the federal, state, and municipal level, is public and may only be utilized for reasons of public interest and national security, under the terms specified in the law. The principle of maximum disclosure will prevail at all times.

(b) All authorities should document any activity resulting from the exercise of its powers or functions.

(c) Establish mechanisms for access to information and expeditious review procedures before impartial and autonomous specialized agencies.

(d) The authorities shall preserve all documents in administrative files and shall update and publish them through electronic means.

(e) Greater power to the Federal Institute for Access to Information and Data Protection (IFAI), which is an autonomous, specialized, impartial, and collegiate body with operational, budgeting, and decision-making autonomy. IFAI is charged with guaranteeing the right to access public information, issuing decisions on denials of requests for access to information, and protecting personal data.[63]

(f) Establishes what information can be classified as confidential or reserved.

(g) The resolutions issued by IFAI shall be binding.

(h) All authorities and public servants are obliged to assist IFAI.

The most far-reaching reform is the requirement that all government authorities ensure transparency and access to information: to (1) the Federal Executive power, Federal public administration and the Attorney General of the Republic; (2) the legislative Federal power, composed of the Chamber of Deputies, the Chamber of senators, the Permanent Commission and any of its bodies; (3) the Judicial power of the Federation and the Council of the Federal judiciary; (4) the autonomous constitutional bodies; (5) federal administrative tribunals; and (6) any other federal body.[64]

62. DECRETO por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia [DECREE by amending and supplementing various provisions of the Constitution of the United Mexico, on transparency], *as amended*, DIARIO OFICIAL DE LA FEDERACION [DO], 7 de Febrero 2014 (Mex.).

63. *See* Instituto Federal de Acceso a la Información y Protección de Datos at http://inicio.ifai.org.mx/SitePages/ifai.aspx (last visited November 26, 2014).

64. Transparency Law, *supra* note 60, Art. 3

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