

Regulation

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(English translation of article in Spanish published by *INFOLATUM*, April 16, 2017)

The energy reform continues to advance despite the low oil prices but its potential impact is far greater than it appears at first sight. Even if nothing else were to happen, the mere liberalization of trade in energy matters and petroleum derivatives uncorks huge opportunities for industry, in addition to opening incommensurate competition for Pemex and the CFE. It is not by chance that this has become one of the most contentious issues in Mexican politics today.

The growth in investment, whether in association with Pemex or in independent fashion, will demand the growth of ports, highways, oil pipelines and other infrastructure that, in itself, will generate opportunities in the form of expenditure, investment and employment. Implementing the reform entails exceptional challenges: on the one hand, the reform needs to be implemented in full, including the relevant regulations that will provide the rules for the daily workings of the industry. On the other hand, there is the fact itself that the energy market involves actors with vast international experience and, at this moment, with a sweeping diversity of investment opportunities and possibilities. That is, it's a buyers' market where the one with alternatives is the potential investor. The key to attracting that technology and that investment dwells on the quality of the regulation.

In one of his writings, Sergio López-Ayllón cited the daunting dimensions of the legal process requiring implementation and mentioned the following four obstacles to surmount: a) organizing the administration in such a way that it would be capable of processing and resolving what at present are contradictory mandates, limited capacities and restrictions for responding in an environment that demands flexibility and agility; b) the urgency of achieving an effective regulatory framework out of the current structure which is complex, imposes high costs and that, "far from providing certainty and judicial security, the legal environment, is one of uncertainty and conflict"; c) the federal arrangement in force does not correspond to a deliberate design in which there are defined responsibilities, capacities and resources. "The result is a knot where many of the decisions pile up and clash with the lack of effective coordination and an absolute lack of clarity in terms of responsibilities"; and d) the absence of an effective system of accountability.

What López-Ayllón depicts is the atmosphere in which the Mexican economy functions day-to-day, and one that can only be aggravated in the case of the energy sector because of the radical nature of the reform in the Mexican context which implies, for example, that Pemex ceases to operate on the basis of massive transfers of resources to the treasury, to be measured with criteria of productivity and profits. This also becomes complicated because of the way that the two entities, one-time monopolies, never characterized as models of probity or efficiency, have operated.

In the case of the potential investors, this involves experienced players who have learned to deal with the planet's most diverse governments, many of these characterized by dysfunctional and marginally trustworthy regimes. A high-level functionary of a multinational oil company recently affirmed, "all of us would prefer to operate in Switzerland, where the rules of the game are clear and sacrosanct, but oil is discovered in the most recondite and frequently unstable places of the globe". It is clear that a Swiss legal system is not required, but it is also obvious that a high degree of certainty must be attained in order to get the process going.

Every successful country in these matters has responded to its challenge in a particular way. Colombia transformed its judiciary (a process that took decades), achieving it being perceived as independent from the Executive Branch, thus prone to acting convincingly when a dispute with the Executive presents. Peru created a fully autonomous and credible regulatory entity in those very terms, garnering the respect of all actors in the environment. Some countries have resorted to international courts of law (and some, to the tribunals of other countries) to gain this credibility.

The regime adopted by the Mexican legislation starts out with a problem because it accords greater importance to the Executive Branch (in the form of the Ministries of Energy and Finance, depending on the matter at hand) than to the autonomy of the regulatory organs. This can be the result of the expectation that the government entertains the credibility necessary to win over the respect of the investors, which entails a bet in these turbulent times.

The alternative explanation, but complementary in a certain way, would be that the legal regime assumes and explicitly recognizes the correlation of forces in Mexican politics; that is, it does not even pretend that the supposedly autonomous entities will act independently; thus, the legal and regulatory structure simply formalizes this circumstance. Be that as it may, the market will decide whether the guarantees and

securities that this new regime creates are sufficient to lure investors. It will be a lesson for everyone, including all other issues in the public domain.

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