

CLIENT UPDATE

BRACING FOR ATTACK ON THE MEXICAN JUDICIARY INDEPENDENCE

Background

As mentioned in our previous Client Update, the Mexican president, Andrés Manuel López Obrador (“Amlo”), introduced on February 5 a bill proposing 18 amendments to the Constitution, with a purpose to undo fundamental pieces of the balance of powers among branches of government and expand the role of the Executive to the detriment of the Judiciary and certain independent regulatory agencies (the “Bill”).

Mexico held elections for president and for a renewal of Congress on June 2. Claudia Sheinbaum was the winning candidate. Amlo’s party increased its number of seats in the Senate, but fell short of winning an absolute 2/3 majority that would have entitled it to approve constitutional amendments by its sole vote, by four senators.

After some hesitation, Sheinbaum fell in line with her mentor and declared her intention to join the president in pushing the main proposed amendment to the Constitution, a fundamental change in the structure of the Judiciary, seeking approval by Congress before the end of September.

The proposed amendments to the Constitution see our previous Client Update [here](#) relate among other to the restructuring of the Supreme Court, the federal courts, and the elimination of the National Electoral Institute, and have had a negative reception in Mexico among several actors, in large part due to their potential to impact Mexico’s young democracy.

In sum, the Bill proposes that the nine justices that would comprise the Supreme Court, be elected by popular vote instead of being appointed. Requirements to be appointed as justice would be modified so as to no longer require that justices have experience in the judiciary or the legal profession, without making it a mandatory requirement, but simply something desirable.

The president would propose 10 candidates, Congress which is currently controlled by the president would propose 10 candidates and the Judiciary would propose 10 candidates, so that 30 candidates might participate in the election for justices. The proposed system would grant

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the president *de facto* control of the nominating process, since it would be entitled to nominate 20 candidates in the aggregate, acting both directly and indirectly through a controlled Congress. In practice, the president would be likely to control federal funds to support campaigns of the 20 candidates ultimately nominated by him.

The Bill contemplates the possibility of subjecting justices to a “political trial” from which criminal responsibility may ensue. Such action would be initiated by a court supervisory entity and would be conducted before Congress. The Bill does not propose clear elements to subject a justice to a “political trial”. It is likely that a decision that would protect Mexican citizens from president-mandated measures, would create the risk for justices to be made subject to such nebulous “political trial”. At a minimum, pressure on justices when deciding over matters considered at variance with the views of the president, would be fairly significant.

Amlo is seeking to clear a path to domination for him and his party known as Morena (*Movimiento de Renovación Nacional*), seriously undermining the independence of the Judiciary, which has been the only effective branch of government exercising checks and balances in Mexico during his term.

Considering recent precedents of bills submitted to Congress -which as mentioned is controlled by Amlo’s party- there is a possibility that the Chamber of Deputies acts in haste to discuss and approve the Bill in its original form. There is a further possibility that Amlo’s party co-opts the vote of some satellite parties of Morena and that the Bill is approved by the Senate after a perfunctory discussion of the same.

Much is vested in these proceedings. It is hoped that Congress weights carefully the consequences of the Bill, listens to academics, bar associations and NGO’s before voting. It is further essential that each vote seeks the good of the Republic. The future of Mexico’s democracy, built upon the basis of three equal independent branches of government is at bay.

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We are closely monitoring developments related to the Bill, including its relation to public policy provisions of the Mexican Constitution, the United Nations Basic Principles on the Independence of the Judiciary and international treaties to which Mexico is a party. Please do not hesitate to reach out to our firm with any questions.

Berdeja Abogados, S.C.

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