

## CLIENT UPDATE

### THE MEXICAN PRESIDENT INTRODUCES BILL OF AMENDMENTS TO THE CONSTITUTION

#### Background

The Mexican president, Andrés Manuel López Obrador (“Amlo”), was sworn in on December 1<sup>st</sup>, 2018.

The Mexican Federal Administration characterized the balance of powers and the administration of justice embodied in the Mexican Federal Constitution as part of “neo-liberal measures” adopted by previous administrations. It soon started proposing amendments to existing laws and implementing administrative measures to concentrate more power in the Executive branch to the detriment of the Judiciary and of some independent regulatory agencies.

Some of such amendments to laws and administrative measures are being challenged in Mexican courts and international tribunals.

Considering among other factors the possible outcome of pending proceedings, the president introduced a bill proposing 18 amendments to the Constitution and two amendments to other laws, with a similar purpose to that sought by the amended laws and administrative measures being challenged: to undo fundamental pieces of the balance of powers and expand the role of the Executive with respect to the Judiciary and certain independent regulatory agencies.

This Client Update focuses on the key amendments to the Constitution proposed by Amlo and will be followed by updates as the proposed amendments are reviewed by Congress.

#### Proposed Bill

On February 5<sup>th</sup>, 2024 Amlo introduced a bill to the Chamber of Deputies to amend 18 sections of the Mexican Constitution and two statutes (the “Bill”) to, among other:

° Arguably, foster a clean climate policy;

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- Strengthen the monopoly of CFE, the federal government-owned producer of electricity;
- Protect animals;
- Place the Federal Guard -originally a federal police force- under the hierarchy of the Army;
- Expand the circumstances in which federal prosecutors may request preventive detention;
- Recognize tribes and Afro-Mexican communities as legal persons;
- Grant a nominal pension to senior citizens – above 65 years of age-;
- Reduce wages of members of the Judiciary and other public servants;
- Increase minimum wages and the right to medical care – without so far proposing the means to fund the same;
- Extinguish the National Electoral Institute – the autonomous public agency in charge of organizing federal elections;
- Restructure the Mexican Supreme Court to create a body controlled *de facto* by the Executive and its instrumentalities;
- Increase federal pensions -without proposing until now the means to fund the same;
- Revert back control of cargo railroads to the Executive, which may mandate the use of the same to transport passengers, without expression of cause;
- Restructure federal courts to create a structure controlled *de facto* by the Executive and its instrumentalities;
- Expand workers' rights to federal housing -without proposing the means to fund the same;
- Eliminate several independent regulatory agencies, including the Federal Competition Commission, the Federal Communications Institute, the National Transparency Institute, the National Energy Commission and the Consumer Protection Commission, assigning their functions to departments of the Executive.

It is of utmost importance that contrary to recent precedents of bills submitted to Congress - which is controlled by Amlo's party- that were approved in haste, Congress acts deliberately and with special care when reviewing and discussing the proposed Bill.

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## Potential Consequences

The proposed amendments to the Constitution relating to the elimination of the National Electoral Institute and the restructuring of the Judiciary, had a chilling effect in Mexico, in large part due to the risk of affecting Mexico's young democracy.

In sum, the proposed amendments may cause Mexico to revert to that long period of time in which the federal government was both, a major player in elections through the official candidates nominated by the ruling party, and an arbiter through its function of reviewing and declaring valid federal elections. Such amendments may also undermine the independence and professional capacity of the Judiciary, and convert it into a political body, subservient to the president.

## Elimination of the National Electoral Institute

The Federal Electoral Institute, predecessor of the current National Electoral Institute, was founded in 1990 pursuant to amendments to the Constitution and implementing legislation passed by Congress. It was comprised of independent commissioners, commissioners proposed by the main political parties on the basis of votes attained in the last election, a president and a secretary. Through amendments to implementing legislation, the Federal Electoral Institute was subsequently comprised of a majority of citizens fully entitled to vote at its meetings, and a minority of representatives of the main political parties, without a right to vote. The Institute was renamed National Electoral Institute in 2014. It is comprised today of 10 citizens named by the Chamber of Deputies and a president. The National Electoral Institute (known as *INE* by its acronym in Spanish; "INE") has become a stalwart safeguard of Mexico's political system, trusted by a vast majority of Mexican citizens.

The INE has presided over successive peaceful and democratic elections in which the previous ruling party -the Institutional Revolutionary Party-; a centrist party -the National Action Party; and a leftist party – the National Renovation Movement, the party of president Amlo, have won presidential elections.

The Bill proposes to eliminate the INE and create a new body called National Electoral and Consultations Institute ("INEC" after its acronym in Spanish)

The proposed new body would have seven directors elected by popular vote. In addition, each political party would appoint a representative which could attend meetings but would not be entitled to cast a vote. 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. The proposed system would grant the president *de facto* control of the nominating process, since it would be entitled to nominate 20 candidates in the aggregate, acting both

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directly and indirectly through a controlled Congress. Notwithstanding cosmetic elements included in the Bill, the president would be likely to control federal funds to support campaigns of the 20 candidates ultimately nominated by him.

Implementing legislation should be passed by Congress within 180 days after enactment of the Bill.

### **Supplant the Mexican Supreme Court**

Since the current Constitution was enacted in 1917, the Supreme Court has been an independent body and the highest tribunal in the Nation for all cases and controversies arising under the Constitution. Its justices are required to have experience in the Judiciary or in the legal profession. Candidates to occupy the position of justice are nominated by the president and approved or rejected by the Senate. In case of rejection, the president is required to present new candidates for the position.

The Bill proposes to dislodge the Supreme Court. The nine justices that would comprise the proposed Supreme Court, would be elected by popular vote. Requirements to be appointed as justice would be modified so as to require that the branches of the Union “procure” to nominate persons with experience in the judiciary or the legal profession, without making it a mandatory requirement to satisfy one of both elements.

The president would propose 10 candidates, Congress which as mentioned before 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. As mentioned in the case of INEC, the proposed system would grant 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 voting in favor of the same 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.

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Should the Bill be approved by Congress, the Supreme Court would be dislodged. No longer the supreme professional body of an independent power of the Union, it would be converted into a political body subservient to the president.

Implementing legislation should be passed by Congress within 180 days after enactment of the Bill.

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We are closely monitoring developments related to the Bill, including its relation to public policy provisions of Mexican law 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.

March 7, 2024