

How Much Legal Leeway is in the Hands of the Mexican President?

By Tracy Delgadillo,
Mauricio Garza and
Jaime A. Treviño.

Mexico will hold presidential elections on July 1st, 2018 and on December 1st of such year, President Enrique Peña Nieto will leave his position and the new Mexican president will take office.

On this time and as it occurs in every election period, a series of interrogations arise regarding how a new president can change or affect in any way the situation of the country, which will be his or her powers and limitations and how will the new president's exercise of power could affect the financial, foreign investment and energy sectors, the latter being recently opened to private investment and to the free market.

The president does not act alone. The exercise of power is divided in three different government bodies: (i) the Executive Branch, in charge of running and managing the country, (ii) the Legislative Branch, who is in charge mainly of the creation and modification of laws, and (iii) the Judicial Branch, responsible of applying and enforcing the law, as well as issuing case law. The president leads the Executive Branch and remains in his or her position for six years, and despite being the head of the government, the president does not have unlimited powers and in many occasions his or her actions are subject to the approval and surveillance of the Legislative and Judicial Branches.

One of the limited powers of the president resides in the process of creation and modification of laws, given that although the president has the authority to file a bill or reform, such bill or reform must be reviewed, voted and approved by the Legislative Branch, vested upon the Congress of the Union, which is integrated by the House of Representatives (500 members from different political parties) and by the Senate (128 members also from different political parties), whose members are elected by the Mexican people. If the president has the support of the majority of the representatives and senators that compose the Congress of the Union, it would be easy to pass a bill or reform in the way the president proposes; however, in the past 20 years, the Congress has been quite fractured, which has made, and continues to make it very difficult for the president to have a free path to make modifications to his or her will.

Once a law is in full force, the Executive Branch has the authority to issue regulations and decrees with the purpose of regulating in a more specific way any issue set forth in an existing law. Such regulations and decrees are not subject to the approval of the Legislative Branch, they are only authorized by the office of the president through the Ministry of State in charge of the matter related to the law in question. The president could, in fact, alter the *status quo* through such regulations and decrees, and he or she could even go against any law provisions. Nonetheless, any regulation that is against the Mexican laws can be declared void by the Judicial Branch, given that they need to abide to the content of the law.

For example, if the president would want to modify the energy sector by reforming or abrogating the Hydrocarbons Law and the Electric Industry Law among other laws that regulate such sector, the approval of the Legislative Branch is needed. The president could modify the rules of the game by issuing decrees or regulations that regulate procedural matters, such as the regulation that defines the

bidding or termination process of the agreements for the exploration and extraction of oil or the requirements needed for an individual to become a distributor or supplier of hydrocarbons, among others; but in such case the president would need to abide to and not contradict the existing legislation, otherwise they could be declared void by the Judicial Branch as a result of a lawsuit filed by an individual through an *amparo* trial arguing the violation of his rights, of the principle of legality and of the individual rights.

In terms of foreign policy matters, the president has the authority to execute, terminate, report, suspend, modify or amend international treaties; in the understanding that in order to exercise such authority, he or she inevitably needs the approval of the Senate. Likewise, the legislation in force regarding foreign matters could only be modified if such modifications are approved by the Legislative Branch, and in this and in any other matter, the president must bear in mind that no reform to the Mexican law can be applied retroactively. The president could issue decrees or regulations that provide, for example, additional obligations for the foreign investors in Mexico, always respecting the limitations of the laws and of the Mexican Constitution.

The same happens in the financial sector. The ghost of nationalization of the banks is long gone, given that besides the financial health of our country for the past 20 years ago, the process for the creation of laws and the impossibility of the president to modify the Constitution without the intervention of the other government branches in the country, make it very complicated to think that this could happen again, the foregoing aside from a clear separation of powers and a very divided Legislative Branch due to the political diversity in the country. The National Banking and Securities Commission, which is a deconcentrated body from the Ministry of Finance and Public Credit, could change the order regarding the supervision and regulation of the financial system as well as the obligations of the issuing companies or of the participants in such system, but just as the president when issuing regulations or decreed, the Commission cannot go against the current legislation and should only add to it regarding its application.

In conclusion, notwithstanding that every candidate to the Mexican presidency has different ideas as to the way in which they wish to rule the country, it is clear that in no case the new president will have absolute power to drastically modify the system of the Mexican government and its laws. The operation of the system designed by the Mexican Constitution is only made possible through the participation of its three government branches: Executive, Legislative and Judicial. It is true that for many years one power block dominated the exercise and management of the government; however, it is very clear that nowadays the division of powers is not only captured in the Constitution but it is perceived in each one of said government branches acting independently and that are integrated by members of several and diverse political ideas, who would hardly support projects that would only benefit the interests of the other political parties. We have seen this practice in history in the last 20 years, creating locks that for better or for worse, have not allowed the presidents to rule according to their free will.

Mexico will have a new president, but the country is hoping that whoever the president will be, he or she will keep, whether for conviction or for obligation, working in the same path that has made the country grow in the past years.

Please send any question or comment to info@jata.mx. The authors are members of the legal team at JATA – J.A. Treviño Abogados. JATA is a Mexican firm of lawyers with offices in Monterrey, Mexico and in Houston, Texas.

December 18, 2017.



www.jata.mx

Disclaimer: J.A. Treviño Abogados S.A. de C.V. (the "Firm") does not necessarily endorse, and is not responsible for, any third-party content expressed in this article. Any article, quote, or any other type of information solely reflect the views and comments of their respective authors. Any article, comment, quote or any other information appearing under the authorship of any person or legal entity other than the Firm, even if related to the Firm, solely represents the opinion, comment or position of such author. The information contained in this article is provided for informational purposes only, and should not be construed as legal advice on any subject matter. The information contained in it is protected as property of the Firm. No recipient of this article, clients or otherwise, should act or refrain from acting on the basis of any content included in the article without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from an attorney licensed in the relevant jurisdiction. This article contains general information and may not be updated nor reflect current legal developments, verdicts or settlements. The Firm expressly disclaims all liability in respect to actions taken or omitted based on any or all of the contents of this article.

© 2017 J.A. Treviño Abogados S.A. de C.V., Monterrey, N.L. Mexico.