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## HIGHLIGHTS

### When Will Brazil's Currency Stop Falling? After the Presidential Elections

Brazil's currency continues to be challenged as investors move out of *reals* and into dollars or other safe currencies. The \$30 billion loan by the IMF and pledges by international banks to keep lines of credit open to Brazilian corporates have failed to ease the uncertainty over Brazil's financial future. The reasons for the anxiety have much to do with politics and little with the underlying soundness of Brazil's financial system, says Barclays' José Barrionuevo. Page 3

### Picking up the Pieces in Argentina—Why Is the Economic Crisis Still Unresolved?

Eight months after the government defaulted on the debt and devalued the currency, Argentineans still cannot get their money out of the banks. Despite the pain that average citizens are feeling, there are many ways to start to pull the country out of its financial tailspin, says Carnegie Mellon's Adam Lerrick. Page 2

### Panama to Open its Telecommunications Sector

In January next year most telecommunications services will be provided by private companies. The licensing regime and interconnection rules are examined. Page 23

### New Regulations Clarify "Venezuelan" vs. "International" Investments

The new regulations are important because of the benefits and rights, such as remittances and dividend payments, that may be exercised by international investments. Page 25

### Special Feature: Mexico's Energy Sector

- President Fox sent Congress an initiative to permit private investors to build and operate some types of electricity plants. The bill would require changes to Mexico's constitution. Page 16
- If Mexico is to expand its electricity sector, it will need natural gas to power the generators. The government is expected to soon send Congress a bill that will give private gas producers a larger role. Page 18
- International private capital can help Mexico meet the growing demand for electricity through Independent Power Projects. An examination of a recent decision by the Mexican Supreme Court that seemed to put IPPs in jeopardy. Page 20

The Fine Print

## Presidential Bills Would Reform Electricity Regulatory Framework

by Miguel Angel Quintana

President Vicente Fox sent to the Permanent Commission of the Mexican Congress several bills to reform the electricity regulatory framework. The bills call for:

- amendments to articles 27 and 28 of the Mexican Constitution (Constitution);
- amendments to various articles of the Electricity Public Service Act (LSPEE);
- amendments to various articles of the Energy Regulatory Commission Act (LCRE);
- approval of the new Federal Electricity Commission Organic Law (LCFE); and
- approval of the new Energy Control National Center Act (LCENACE).

According to the bills, the purpose of the reform is to reorganize the electricity sector by opening up activities that correspond to public service<sup>1</sup> and those activities in which the social and private sectors may participate. The reform is intended to establish the organizational basis for a new industry that will benefit from the advantages derived from the joint participation of public, social and private sectors as well as the diversification of financial sources.

The following are the most important items contained in the reform bills.

### Constitutional Amendments

Articles 27 and 28 of the Constitution would be amended to establish the following basic principles of the industry:

- the rendering of public service regarding electricity remains a strategic area under the exclusive competence of the Mexican government;
- individuals and private entities may generate electricity for self consumption or for the Mexican government. Individuals and private entities may

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also supply electricity to "Qualified Off-takers" (defined as those off-takers involved in industrial, commercial or services activities, with requirements higher than 2500 MW/hour per year) without such activities being considered within the concept of public service;

- access to the national transmission grid is guaranteed. Self-supply, co-generation, independent power production, small production, importation and exportation of electricity, and generation of electricity for emergency

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***In addition to President Fox's reform bill, two other electricity bills are in the Congress: one from the Revolutionary Institutional Party (PRI) and one from the Democratic Revolution Party (PRD). Unlike the Fox bill, these bills do not call for constitutional reform.***

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schemes (jointly, "Permit Holders") remain in force, and such activities do not constitute public service.

Under the bills, the activities of generation, importation, distribution and sales of power to Qualified Off-takers, are introduced, provided further that such activities are not considered as public service. Further, exports of electricity are not considered as public service.

### 30-Year Permits

To carry out the activities referred to above, a permit from the Energy Regulatory Commission (CRE) is required; such permit may be granted only to Mexican individuals or corporations (there are no restrictions on the amount of capital stock that may be owned by foreign investors) that prove their legal, technical, administrative and financial capabilities; such permits may have a maximum term of 30 years and may be extended.

Qualified Off-takers must be registered by the CRE and may obtain electricity from:

*Continued on page 17*

### Regulatory Framework (from page 16)

- the Federal Commission of Electricity (CFE), and Central Light and Power (LFC);
- directly from any permit holder;
- through the Energy Control National Center (CENACE);
- through imports; and
- from any authorized seller.

Decentralized entities (currently only CFE and LFC), permit holders that supply electricity to Qualified Off-takers, and Permit Holders may offer and deliver electricity to the CENACE for its dispatch. Likewise CENACE may supply the electricity that is offered and delivered to it to such decentralized entities, permit holders that supply electricity to Qualified Off-takers and Permit Holders.

The CFE and LFC will continue to be responsible for the transmission and distribution of electricity.

The assets of CFE and LFC will not be privatized.

CFE will continue to carry out its current activities, except for the dispatch of electricity through the national transmission grid and the operative control of the electric system, which activities will correspond to the CENACE.

CENACE will be in charge of the operative control of the National Electric System and dispatch operations. CENACE will be incorporated as a public, decentralized entity with its own legal capacity and patrimony, and with autonomy from CFE and LFC. Managed by a board and a general manager, the board will be composed of:

- the Minister of Energy, who will chair;
- a director designated by the public entities in charge of the generation of electricity (currently, CFE and LFC);
- a director designated by private generators;
- a director designated by the Consumer General Attorney; and
- a director designated by Qualified Off-takers.

The labor rights of CFE and LFC employees established in the Federal Labor Act and in the Collective Labor Agreement will be preserved.

The operative structure of CRE will be strengthened and its powers will be reviewed, including the power to establish requirements over pricing, service quality and information for the economic agents that, according to the Federal Antitrust Commission, have substantial power in the relevant market.

The Minister of Energy will carry out the planning of the industry, based on programs proposed by CENACE.

The Executive Branch will promote the development of renewable energies and the Ministry of Energy will propose the benefits to be granted for developing such projects.

### Comprehensive Plan to Reform Energy Sector Not Offered

The various bills that constitute the electricity reform of President Fox were sent on August 21 to the Senate to be analyzed and may be discussed in the Congress in the next ordinary session, which will begin on September 1st.

Conspicuously missing from the package of bills sent by President Fox were additional initiatives to achieve reforms in the entire energy sector. In order to develop the electricity sector, other sectors, particularly natural gas, must also be revised in order to increase gas production and transportation, since most of Mexico's power generation plants rely on natural gas for fuel. [For more on Mexico's gas sector, see page 18.]

### Congressional Opposition

In addition to President Fox's reform bill, two other electricity bills are presently before the Congress: one from the Revolutionary Institutional Party (PRI) and one from the Democratic Revolution Party (PRD). Unlike the Fox bill, these bills do not call for a constitutional reform.

Constitutional changes require the approval of two-thirds of the Mexican Congress and of the majority of the legislatures of the States.

Some legislators from the PRI and PRD have expressed their opposition to any constitutional reform. Such opposition is weakening. Some members of the PRI (including legislators and governors) have said they may not oppose a constitutional change if it would encourage needed investment in the sector and the development of infrastructure. The leadership of the PRI has agreed to review the reform initiative, which indicates that a constitutional reform might be possible if political negotiations and agreements are reached between the PAN (President Fox's party) and the PRI.<sup>2</sup>

<sup>1</sup>The concept of public service is defined as the activities carried out by the state through decentralized entities and in a continued, uniform, regular and permanent manner to supply the electricity that will satisfy basic collective needs.

<sup>2</sup>The first of many recent bills to reform the electricity sector was sent to the Congress in 1999, by then-President Ernesto Zedillo, a member of the PRI. Such bill, the most liberal of them all, was vetoed by the PAN for political reasons. The idea of constitutional changes to reform the electricity sector is gaining in popular support as the public is becoming more aware of the importance of the issue. □

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