



November 29, 2021

INFORMATIVE NOTE

General Law on Circular Economy

On November 17, 2021, Mexico's Senate of the Republic approved the *Draft Decree issuing the General Law on Circular Economy* (the "**Draft Decree**"). The Draft Decree was sent to the Chamber of Deputies for discussion and, if appropriate, approval. [Here](#) you can access the full text in Spanish of the Draft Decree received by the Chamber of Deputies on November 22, 2021.

I. General Law of Circular Economy – General Matters.

Since it is a Law of a general nature, it governs and distributes authorities and powers between the three levels of the Mexican government. That is, it is applicable to (and empowers each of) the federal, state, and municipal governments.

Although we consider that it will be the Regulations and the multiple legal provisions that derive from the Law (*e.g.*, Official Mexican Standards) that ultimately establish in detail and clarity the scope and obligations imposed by the Draft Decree, the General Law on Circular Economy (the "**Law**") establishes general rules and principles on the application of the principle of "*Circular Economy*" throughout the national territory, and the trend towards the application of said principles in all industries and services.

To understand the scope and concept of the Law, we note that the Law defines the concept of "*Circular Economy*" as:

“System for the production, distribution and consumption of goods and services, aimed at redesigning and reincorporating products and services to maintain the value and useful life of products, materials and resources associated with them in the economy for as long as possible, and that the generation of waste is prevented or minimized, reincorporating it again in cyclical or biological production processes, in addition to promoting changes in production and consumption habits;”





Among the main objectives of the Law are to: **(a)** promote efficiency in the use of products, services, materials, energy, water, secondary raw materials and by-products through “*clean production*”, reuse, recycling and redesign, as well as energy recovery; **(b)** establish and promote “*Circular Economy Criteria*”¹; **(c)** promote and encourage products to incorporate Circular Economy Criteria; and **(d)** promote the use, generation and access to clean and renewable energy in accordance with the principles of Circular Economy.

I.1 Powers and Distribution of Authorities.

To prepare and conduct the Circular Economy policy, the State will conduct, among others, public policies regarding: **(a)** efficient use of natural resources; **(b)** protection of the environment; and **(c)** promoting economic growth.

I.1.1 The Federation.

In general terms, Mexico’s federal Ministry of the Environment and Natural Resources (“**SEMARNAT**”) will oversee the implementation of the provisions of the Law at the federal level, including the design, preparation, conduction and evaluation of the “national policy on Circular Economy”.

Among many other powers and authorities, the Federation will develop and implement a scheme of market and tax economic incentives for persons and value chains that incorporate Circular Economy Criteria in their production processes. In this regard, Chapter VI of the Law establishes that the Ministry of Finance and Public Credit may grant the tax incentives that it deems necessary to promote the Value Chain and the use of Secondary Raw Materials.

With respect to tax incentives, the Law is silent on whether the incentives may include incentives for generators and consumers of products that may be produced through the conversion of waste such as cow manure. For example, a program similar to that in the U.S. by virtue of which tax incentives are granted on renewable natural gas (RNG) or biomethane so that it may compete with natural gas from fossil sources and not just act as *in situ* fuel for

¹ Section VI of article 3 of the Law defines them as: “*Those that promote the reduction of the carbon footprint, the water footprint or the optimization of the use of materials, through the efficient use of natural and economic resources, consumption and sustainable production; the use, recycling, composting, co-processing or any other type of recovery or exploitation;*”.





the generation of electricity, but also being capable of transporting or shipping it through pipelines or otherwise.

The provisions of the second paragraph of article 9 of the Law should be highlighted, because they establish that the agencies and entities of the Federal Public Administration “that exercise powers conferred on them by other ordinances whose provisions are related to the subject matter of this Law”, **will adjust their enforcement** to the criteria, regulations, Official Mexican Standards, and other applicable legal provisions derived from the Law. This means, for example, that bodies such as the National Hydrocarbons Commission (“CNH”) and the National Water Commission would have to “adjust” its criteria and regulations since the CNH and the National Water Commission have a mandate to ensure the maximum use of natural resources (in the case of the CNH, hydrocarbons).

1.1.2 The States (Federal Entities).

Most of the powers of the States are limited to coordination actions with the Federal Government; however, the obligation to issue legal regulations is established, as well as the promotion of the creation of infrastructure for the development and implementation of the promotion of the Circular Economy, with the participation of investors and representatives of the social and private sectors. In addition, the federal entities must design and promote the application of economic, fiscal and financial instruments that aim at promoting the Circular Economy.

It is worth noting that the states: (a) will generate a state registry/list (*padrón*) of companies that have a Circular Economy Plan;² and (b) promote the creation and establishment of “*Operating Bodies*”³ and the management of the Circular Economy of the states’ governments.

²The Law is not clear in establishing the function or purpose of said registry.

³ Defined by section XV of article 3 of the Law as the “*Associative entity of a public, private or mixed nature, with its own assets and legal capacity, created to comply with the principles of this Law;*”. In accordance with article 46 of the Law, these may include different civil or commercial associations or entities, material banks, food banks, compost plants, power generation plants from clean or renewable sources, community dining rooms, training and teaching, cooperatives, community gardens, among others.





1.1.3 Municipalities and Boroughs of Mexico City.

The municipalities may issue regulations and administrative provisions in order to comply with the provisions of the Law, as well as establish contributions to individuals who administer, to whom a concession is granted for, or are assigned to, a final disposal site.

II. Some Obligations of Private Parties.

Any person whose activity is the manufacture, elaboration, production, importation or manufacture of **containers and packaging**, are obligated to submit before SEMARNAT, for their registration, a “Circular Economy Plan”.

The Law defines the “*Circular Economy Plan*” as the administrative tool based on the shared responsibility between the manufacturer, distributor and user of a good or service, which, in collaboration with the different levels of government, proposes actions and objectives aimed at complying with the Circular Economy Principles and Criteria.⁴

Furthermore:

- (i) SEMARNAT will establish an Official Mexican Standard that will contain a list of the products that are required to publish information on their proper handling at the end of their useful life; and
- (ii) the people who build, elaborate, manufacture, produce and distribute electrical or electronic devices that at the end of their useful life become waste, must submit a management plan before SEMARNAT, which shall contain, at least, the description of the devices, the collection strategies and the delivery of the waste to authorized recycling companies.

⁴ The Law defines the Circular Economy Criteria as: “*Those that promote the reduction of the carbon footprint, the water footprint or the optimization of the use of materials, through the efficient use of natural and economic resources, consumption and sustainable production; the use, recycling, composting, co-processing or any other type of recovery or exploitation.*”.



III. *Secondary Raw Materials.*

The Law defines “*Secondary Raw Materials*” as all those materials at the end of their useful life, non-conforming products, or by-products, which are converted into second-use raw materials when they are separated, stockpiled and collected or recovered, and are managed and/or they are sold for reuse, recycling, composting or any other type of recovery or exploitation, and they substitute or reduce the use of virgin raw materials.

In the case of products or by-products that “*are not susceptible to reuse, repair, composting, recycling or reincorporation to value chains*”, they may be used in energy through recovery (*valorización*) processes.

All people, institutions or government bodies that operate final disposal centers such as sanitary landfills, **are required to take advantage of the energy of the gases that emanate from the same facility**, prior analysis of environmental, technical and economic viability.

IV. *“Zero Waste” Certification.*

“Zero Waste” is understood as the set of policies, instruments and programs aimed at promoting the recovery and use of waste, in order to disincentivize the materials ending up in a sanitary landfill or in the environment.

In accordance with article 40 of the Law, SEMARNAT may issue certifications or labels that demonstrate its “*full compliance with federal regulations on waste management in a Circular Economy scheme.*” SEMARNAT shall issue the guidelines to obtain and maintain said certification.

V. *Sanctions and Fines.*

Violations to the Law, its Regulations and other provisions that derive from it will include, among others: (a) a fine of up to seventy thousand Units of Measurement and Escalation (known as “**UMA**” in Spanish),⁵ which may be increased up to three times the

⁵ It is not mentioned whether it is daily, weekly, or monthly.





original amount in case of repeat offenders; **(b)** temporary or permanent closure, whether totally or partially; **(c)** administrative arrest for up to 36 hours; **(d)** repair of the damage; **(e)** community service; and **(f)** the suspension or revocation of the corresponding concessions, licenses, permits or authorizations.

What's Next?

In the event that the Law is approved by the Chamber of Deputies, and once published in the Federal Register it will go into force 180 calendar days from such publication.

Within a period of six (6) months as of the entry into force of the Law (that is, counted once the 180 calendar days have elapsed after its publication in the Federal Register), the Federal Government will issue the National Circular Economy Program.

The transitory provisions of the Law establish an obligation of the Federal Congress and the states' legislatures to "*adapt within the scope of their respective jurisdiction*" the applicable legal provisions on the subject matter.

Also, an obligation is established for the Miscellaneous Tax Rules (issued by the federal Tax Administration Service) to be amended so that it is consistent with the "*terminology used*" in the Law; particularly the use of secondary raw materials, "*as well as establishing a preferential tax mechanism and incentives for those who intervene in the various activities of the value chains.*"

Finally, the Tenth Transitory Provision of the Law establishes a progressive goal on the minimum content of recycled plastic material that must be: **(a)** twenty percent (20%) by 2025; and **(b)** thirty (30%) by 2030.

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This document does not constitute legal advice.

