



Campa &
Mendoza
ABOGADOS

17 October 2022

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REGULATORY ALERT

New Version – CNH Regulation on Changes in Control, Transfers of Participating Interests and Liens

- The Proposed Regulation by CNH no longer grants SENER *de-facto* “deemed denial” or veto over applications/requests made to CNH to undergo a change in control.
- The new version of the Proposed Regulation maintains other changes introduced by the first draft of the Proposed Regulation on 25 March 2022.
- Certain grey areas and provisions lacking clarity as applicable to E&E Contracts held by a single company and changes in control of one company of a consortium are clearly regulated in this new version of the Proposed Regulation.

On 14 and 20 October 2022, the National Hydrocarbons Commission (“*CNH*”) sent to the National Commission for Regulatory Improvement (“*CONAMER*”) new versions of the proposed regulation: *Guidelines for Assignments, corporate changes and Lien* (the “*Proposed Regulation*”).

The Proposed Regulation was first submitted for public consultation by the CNH on 25 March 2022. On 11 July 2022 the CNH introduced minimal changes and ever since the Proposed Regulation remained subject to comments from any interested party.

If and when published in the Federal Register (*Diario Oficial de la Federación*), the Proposed Regulation will replace the existing *Guidelines establishing the requirements and procedure to enter into joint venture or partnerships with respect to hydrocarbons’ exploration and extraction contracts* (“*Existing Regulation*”).

Both the Existing Regulation and the Proposed Regulation apply (or will apply) to Hydrocarbons’ Exploration and Extraction Contracts (“*E&E Contracts*”) in Mexico with respect to, among others: (i) transfers of interests; (ii) changes in control under such E&E Contracts or companies holding an interest thereto; (iii) imposition of liens to participating interests (“*PI*”); and (iv) notices to CNH regarding changes in capital stock composition and transfers of PI.





The new version of the Proposed Guidelines introduces specific changes that resolve some key issues and inconsistencies of the Existing Regulation and the first two drafts of the Proposed Regulation:

1. CNH will issue a resolution on an application/request to authorize a change of control ten (10) days after the term given to the Ministry of Energy (*Secretaría de Energía*) (“**SENER**”) elapses regardless of a response being issued by SENER:
 - a. Recall that the first draft of the Proposed Regulation eliminated this provision from the Existing Regulation so that SENER would have a “deemed denial” right in cases where it failed to issue a response to the consultation made by CNH.
2. Introduces the concept of “*individual Contractor*” to clearly indicate the scenarios where the regulation is likewise applicable to E&E Contracts held by a single company.
3. It clearly identifies when a: (i) change of control is applicable to individual Contractors (*i.e.*, a single company holds the E&E Contract) or a Participating Company (*i.e.*, more than one company holds the E&E Contract); and (ii) a change in the control of operations of a Contract Area.
4. As a result of 2 and 3 above, the definition of “*Corporate and Managerial Control*” is amended so that it now applies to each company individually and to joint ventures regarding the majority of PI.

These new versions of the Proposed Regulation were submitted by CNH in response to recommendations of CONAMER to the first two drafts published by CNH in CONAMER’s website. Thus, the Proposed Regulation technically remains subject to comments from any interested party.

Considering the changes introduced by this draft of the Proposed Regulation, the Governing Body of the CNH will likely be required to re-approve it. At the moment, Governing Body of CNH is lacking the necessary quorum to pass such resolution. Based on the content of this proposed draft, it seems the CNH will wait for the appointment of the new Commissioner by the Mexican Senate.

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This document does not constitute legal advice.

