



Campa &
Mendoza
ABOGADOS

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REGULATORY ALERT

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

- The New Regulation replaces the *Guidelines establishing the requirements and procedure to enter into partnerships or joint ventures where an assignment of the corporate control or the control of operations occurs, with respect to hydrocarbons' exploration and extraction contracts*, originally published on January 30, 2017.
- The criteria used and precedents issued by CNH to approve upstream transactions between 2017 and 2023 are “codified” in the New Regulation.
- The New Regulation establishes specific procedures to: (i) certify the technical and financial capabilities of any company wishing to acquire an interest in an E&E Contract; and (ii) approve liens over PIs or other assets related to E&E Contracts, granted in favor of creditors in general.

Today, the National Hydrocarbons Commission (“**CNH**”) published in the Federal Register (*Diario Oficial de la Federación*) a new regulation called: *Guidelines for Assignments, corporate changes and Liens* (the “**New Regulation**”). The official text in Spanish may be found in the following link: https://www.dof.gob.mx/nota_detalle.php?codigo=5682055&fecha=08/03/2023#gsc.tab=0

The New Regulation was first submitted as a proposed regulation subject to public consultation by the CNH on March 25, 2022.¹ On July 11 and October 20, 2022, the CNH introduced minimal changes and ever since the proposed regulation remained subject to comments from any interested party.

The New Regulation replaces the existing regulation called: *Guidelines establishing the requirements and procedure to enter into joint ventures or partnerships where an assignment of the corporate control or the control of operations occurs, with respect to hydrocarbons' exploration and extraction contracts* (“**Existing Regulation**”).

¹ See: <https://campaymendoza.com/en/recursos/lineamientos-de-la-cnh-respecto-de-cambios-de-control-cesiones-de-intereses-de-participacion-y-gravámenes/>





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

Among other things, the New Regulation provides the following:

- Regulate the process to apply for and obtain from the CNH: **(i)** a certification of legal, financial, technical, experience and execution capabilities of any person wishing to be a party to (hold an interest in) an E&E Contract; **(ii)** an authorization to undergo a Corporate and Managerial Control of individual companies or to transfer the Control of Operations of a relevant block; and **(iii)** an authorization to grant Liens over any rights under E&E Contracts.
- To a certain extent, codify the criteria used by the CNH and other precedent for authorizing transactions since 2017 up to this date.
- Establish a full/separate process to authorize Liens in favor of creditors (for financing or otherwise), instead of establishing the same authorization process for farmouts and other transactions among operators and joint venturers of E&P projects. This includes providing an increased level of details of the terms and conditions of the financing transaction, as well as the scope of the relevant Lien(s) to be authorized.
- 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. As a result, the definition of the term “*Corporate and Managerial Control*” is amended so that it now applies to each company individually and to joint ventures regarding the majority of PI.
- Addresses most of the problems and issues arising from the Existing Regulation that resulted in conflicting interpretations with E&E Contracts and in delays to receive the authorization from the CNH to transfer participating interests under E&E Contracts.





- Provide clarity with respect to the return of performance and corporate guarantees previously delivered to the CNH.

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This document does not constitute legal advice.

