



# 2014

## MEXICAN ENERGY REFORM

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# **ERNESTO VELARDE**

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**Ernesto Velarde-Danache, Mexican Notary Public and Attorney licensed only in Mexico, was admitted to practice in 1982. He holds an LL.M from the University of Cambridge, of Cambridge, England.**

**Ernesto has spoken about doing business in Mexico in many different countries such as the United States, Canada, Italy, France, Portugal, England, Spain, India, Mexico, the Republic of Ireland, Switzerland, Netherlands, China, Singapore and Korea.**

**He has helped more than 300 companies start business in Mexico.**



# EXECUTIVE AND LEGISLATIVE BRANCHES RATHER BUSY THESE LAST 2 YEARS. WE HAD A:

- LABOR REFORM
- TAX REFORM
- FINANCIAL REFORM
- CONSTITUTIONAL REFORM
- TELECOM REFORM
- EDUCATION REFORM AND
- ENERGY REFORM (THE JEWEL OF THE CROWN)

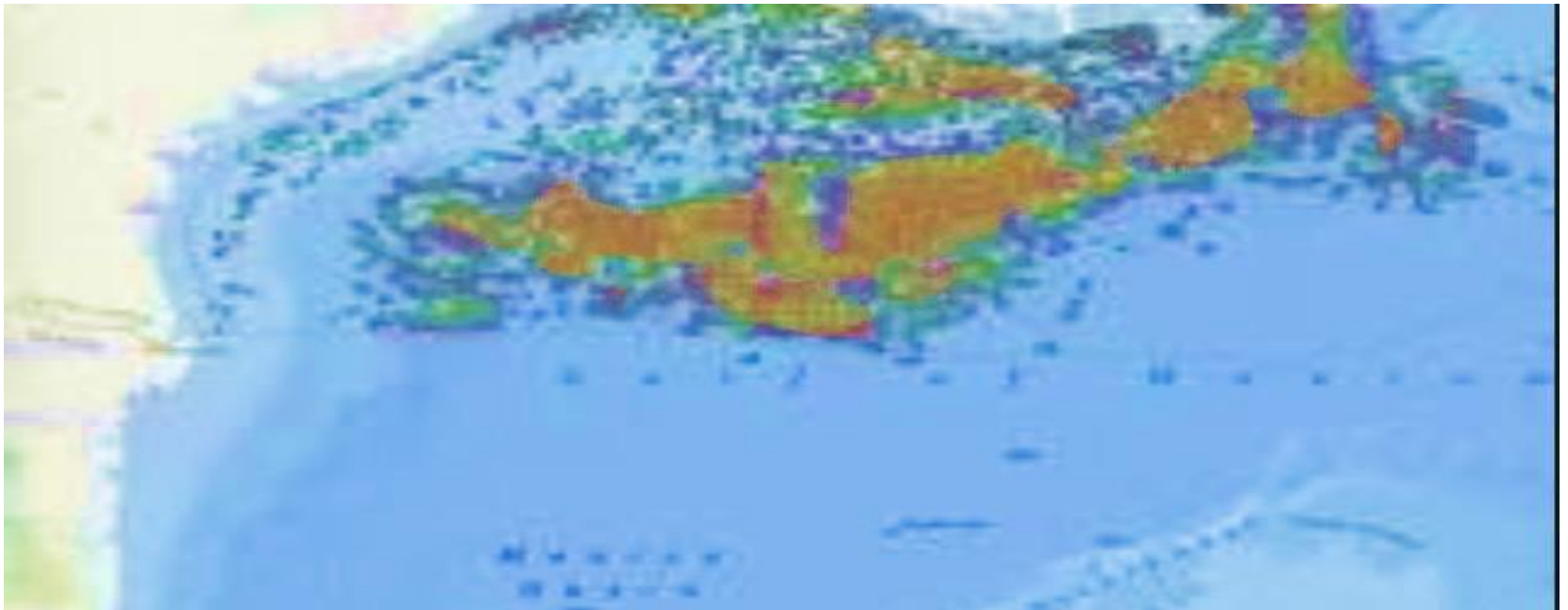


- **Energy Reform: Opening to Private Investment**
- **On December 12, 2013 Mexico's Congress passed a revolutionary energy reform,**
- **Brought end to a 75-year state monopoly in petroleum sector.**
- **1938 all assets of foreign companies expropriated**
- **Following a highlight of the recently approved Mexican Energy legislation.**



# Gulf of Mexico Now

- **A picture tells more than thousand words.**
- **70 Companies operating in USA side vs. 1 in Mexico**





**Following a highlight  
of the recently  
approved Mexican  
Energy legislation.**

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**ARTICLE 25**

**The State maintains:**

- **The control and ownership of the Productive State Enterprises.**
- **The planning and control of the National Electric System and the exploration and extraction of oil and other hydrocarbons.**
  
- **Rules for the administration,**
- **organization,**
- **operation and**
- **procurement processes in hydrocarbons, among others are established.**

## **ARTICLE 27**

**Maintains the exclusivity of the State in:**

- **Radioactive materials.**
- **Planning and control of the electrical system.**
- **Transmission and distribution of electrical energy**

**No concessions on solid, gas or liquid hydrocarbons but may execute contracts with private companies.**





## **ARTICLE 28**

**They do not constitute monopolies:**

- **Exploration and extraction of oil.**
- **The planning and control of the national electricity system.**
- **The public service for transmission and distribution of electricity.**

**The National Hydrocarbons Commission and the Energy Regulatory Agency are created.**



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## **Approval of the Secondary Legislation.**

**In order to implement the Mexican energy reform, new laws were enacted. Herein below some of the more relevant of the recently laws approved:**

- 1. Hydrocarbons Law**
- 2. Electricity Industry Law**
- 3. Geothermal Energy Law**
- 4. Coordinated Regulatory Agencies Law in energy matters**
- 5. Revenue Law on Hydrocarbons**



**Some of the most relevant existing laws that were modified :**

- 1. Foreign Investment Law**
- 2. Federal Fee Law**
- 3. Federal Budget and Fiscal Responsibility Law**
- 4. General Law of Public Debt**
- 5. Mining Law**
- 6. Public and Private Partnership Law**



## **The hydrocarbons industry is exclusively of federal jurisdiction.**

- **The hydrocarbons industry is a matter of public benefit and policy.**
- **Oil exploration and extraction is considered of social interest and public order.**
- **Will have preference over any other natural resources involving the use of the surface or subsurface of the land.**



## **The public sector controls :**

- **The planning of the national electricity system and the public service for the transmission and distribution of electricity.**
- **Exploration and extraction of oil and other hydrocarbons.**
  - **Assignments to Productive State companies allowed.**
  - **Productive State companies may contract with private individuals.**
- **Radioactive minerals and nuclear power generation.**
- **In any case, the hydrocarbons in the underground are owned by the nation.**



# Different Types of Agreements

<ul style="list-style-type: none"><li>• Assignments</li></ul>	Applicable only to Productive State Companies
<ul style="list-style-type: none"><li>• Licensing</li><li>• Production Sharing</li><li>• Profit Sharing</li><li>• Service</li></ul>	Applicable to Productive State Companies & Private Contractors.



## **Public Procurement**

- **The process will be conducted before the National Hydrocarbons Commission.**
- **Proposals may be submitted and analyzed by electronic means.**
- **Rulings will be published in the Official Daily of the Federation.**


**The adjudication can be formalized with Productive State Enterprises or Corporate entities, individually, in partnership, or joint venture.**




## **Elements to Incorporate in the Energy Contracts**

- **Defining the Contract scope;**
- **Plans for Exploration and Extraction, and the deadline for submission;**
- **The minimum investment;**
- **The obligations of the Contractor, including economic and fiscal terms;**
- **The duration and the conditions for its extension;**



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- **The acquisition of guarantees and insurance;**
  - **The system of external audits to monitor the actual recovery, if any, of the costs incurred and other accounts involved;**
  - **The grounds for termination, including the early termination and administrative termination;**
  - **Transparency obligations to ensure access to information of the Contracts;**
  - **The minimum percentage of national content;**

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- **The conditions and mechanisms for the reduction or refund of the Contract area scope;**
  - **Settlement of disputes, and alternative means for conflict resolution;**
  - **The penalties in case of default;**
  - **Adherence to international best practices for the operation in the Contract area and scope;**
  - **The responsibilities of the contractor and the operator in accordance with best international practices.**




# Causes of Administrative Termination of Contracts

**Grounds for termination or administrative termination are established in Contracts.**

## **Examples:**

- **180 days without operation.**
- **When not meeting the minimum work commitments;**
- **When there is a partial or total transfer of the operation or the contractual rights, without authorization;**

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- **If a serious accident caused by fault or negligence of the Contractor happens ;**
  - **Submitting false or incomplete information.**
  - **When judgment by a federal court is not complied with;**

**Following termination, the Contractor will transfer to the State, without charge, or payment, or compensation, the Contract Area and a settlement will take place.**



## **Dispute Resolutions through Arbitration**

**It will be in the terms of the Commercial Code and international treaties to which Mexico is a party, adjusting the arbitration procedure by the following:**

- The applicable laws are the federal laws of Mexico.**
- Will be made in Spanish.**
- The award shall be made in strict compliance with law and be binding on the parties.**



## **Participation of Foreign Investment**

- The Mexican Government to define strategies for industrial development of local production chains and direct investment in the hydrocarbons industry, with special attention to small and medium enterprises.**
- As for direct investment the state shall in particular:**
  - Encourage direct participation of Mexican enterprises to carry out by themselves activities in the Hydrocarbons industry.**
  - Promote partnerships between Mexican and foreign companies, to carry out activities in the Hydrocarbons industry.**
  - Promote transfer of technology and know how.**



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