

The restrictive measures imposed on private parties in hydrocarbon matters continue, and there are unconstitutionality arguments against them

On June 11, 2021, the Seventh Resolution of Amendments to the General Foreign Trade Rules (“Seventh Amendment”) was published in the Federal Official Gazette. This Seventh Amendment included a restriction on the granting or extension of authorizations for the entry or exit of certain types of hydrocarbons from Mexican territory through places different from a customs precinct, in order to establish that they may only be granted to productive companies of the State (e.g. Pemex) and their subsidiaries.

Beginning on June 12, 2021, only productive companies of the State and their subsidiaries can be authorized to import hydrocarbons, petroleum products, petrochemicals and their specialties, biofuels, as well as some chemical precursors. This measure adversely limited the right of private parties to obtain the extension of the authorizations previously obtained and still current, and to obtain additional authorizations necessary for the development of their economic and business activities.

This limitation of private party rights is part of a group of measures adopted systematically by the Executive and Legislative Branch, the ultimate purpose of which, in our opinion, is to counteract the effects of the Energy Reform approved in 2013.

In VWYS we have identified that there are unconstitutionality arguments against this Seventh Amendment. Various companies are preparing amparo lawsuits and it will be the Federal Judicial Branch that will determine whether or not it is unconstitutional. Some of the arguments in favor of private parties include (i) the violation of article 1 of the Constitution regarding the general protection of fundamental rights, (ii) the violation of the rule that requires this type of restriction to be established by Congress since it is a restriction of rights established by a general administrative rule without any legal or constitutional grounds, (iii) the violation of article 14 of the Constitution and articles 27 and 28 of the same law since it involves, respectively, a reform that could have retroactive effects in prejudice of those governed and a restriction that threatens free enterprise and effective competition, (iv) the possible violation of the principle of legitimate trust recognized by the Federal Judiciary, and (v) a violation of the principle of progressivity in the protection of the mentioned fundamental rights by implying a retreat in the freedoms guaranteed by the Constitution.

This is no small matter. Given the use by some private parties of the authorizations that are now limited, it is also essential to evaluate the risks of an immediate revocation of the authorizations still in force, as well as the possible contractual breaches resulting from a potential immediate revocation or the impossibility of extending an authorization. Apart from the amparo lawsuit that companies may decide to file against the Seventh Amendment or its first act of application, it is also important to review the contracts that the

affected companies have entered into with contractors, including the force majeure clauses for acts of authority and for changes in the law. These clauses could require certain actions of the companies affected by the Seventh Amendment.

If you would like to learn more about this matter, please do not hesitate to contact our experts.

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