

Injunction vs energy regulators' acts

1.- LEGAL PROHIBITION FOR INJUNCTION

According to article 27th of the Law of the Coordinated Regulatory Agencies in Energy Matters (*Ley de los Órganos Reguladores Coordinados en Materia Energética*, "LORCME"), the National Hydrocarbons Commission ("CNH") and the Energy Regulatory Commission ("CRE")'s acts can only be challenged by means of an *amparo indirecto* with [no temporary injunction \(suspensión\)](#) of the act.¹

Nevertheless, in some cases, energy companies might need to get an injunction against a regulator's act, for example:

CNH's approval to suspend the activities contemplated in Exploration and Development Plans, ARES and drilling permits.

» What if continuing the activities jeopardize [production, safety, environment, a human right, ...?](#)

2.- LORCME'S RESTRICTION CONSTITUTIONALITY

We believe that it can be argued that the restriction of injunction is unconstitutional on the following grounds:

- First, the Mexican Constitution establishes that any government act that is contested by means of an *amparo* may be enjoined in the terms established in the reglementary law, which is the Amparo Law (not LORCME).
- On its part, the Amparo Law establishes the exceptions for granting an injunction but does not mention anywhere acts from the energy regulators. In the exceptions it enlists, there is one case that may be applicable for upstream projects: in case the State is prevented from using, exploiting assets of direct domain. In our case, that would be the hydrocarbons in the subsoil (art. 129, f.XIII). **BUT** even in that case, the same Amparo Law establishes that the injunction may be granted if the denial of it causes a greater harm to the public interest.
- In the Mexican legal system, there are other cases of acts of authorities that can only be contested by means of an *amparo indirecto* with no injunction, which are the Federal Economic Competition Commission ("COFECE") and the Federal Telecommunications Institute ("IFT"). However, we find that this restriction is established in the same Mexican Constitution and then, as mandated by the Constitution, established in the Amparo Law.

INSTITUTION	CONSTITUTION	AMPARO LAW	THEIR OWN LAWS
COFECE	•	•	•
IFT	•	•	•
CNH	X	X	•
CRE	X	X	•



As the prohibition for injunction is not included in the Amparo Law, it can be argued then that this restriction established in LORCME is unconstitutional and therefore, [request for the injunction along with the challenged act.](#)

¹ Except for the imposition of **finés** which may be collected once the *amparo* is resolved.

ON INJUNCTIONS:

• The writ of *amparo* is a Mexican legal figure which allows any person to get relief from a law or an authority's act that affects its rights. During the process, an injunction of the contested act may be requested.

• **LORCME's restriction of injunction beforehand may have economic, technical, social, environmental and human rights implications.**

• In addition to the Mexican legal framework, energy companies are also subject to their own standards and codes of conduct that may restrain them for going along with the regulator's decision. Getting an injunction may avoid [penalties](#) and [contractual breaches](#).

• There are no legal precedents yet, most likely because these laws are fairly recent. So, challenging the constitutionality of LORCME will be something new for both, the energy regulators and the District Judge, but it is worth trying.

• **Don't be afraid to request an injunction!** If successful, this will be settling precedents for the country and the industry!

Thanks to our Regulatory and Governmental Intelligence approach, we have been successful in supporting our clients in designing integral legal and regulatory strategies (political, legal financial, technical, social and environmental).

ANALYSTS



MARÍA SERNA advises on the design of the regulatory compliance strategies where she oversees that each of our suggestions is both legally viable and enforceable as well as representing the minimum government relationships wear. She has experience in advocating before high-level public servants of the energy regulators in favour of our clients often integrating diverse stakeholders' points of view.

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We are a unique firm integrated by experts in energy regulation and public administration, conformed by a professional team with vast experience in the evolution of the energy sector during the last 10 years.

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