

## The Top 5 Areas Where Energy Attorneys Can Shine In Mexico

By **Keith Goldberg**

*Law360, New York (August 14, 2014, 8:58 PM ET) --* After 75 years of government control, Mexico's oil and gas sector is officially open for business. For energy attorneys, the hard work begins now.

"Mexico is coming out of a period of over seven decades of handling an oil industry through a state-run monopoly," said Jose Valera, the co-chair of Mayer Brown LLP's oil and gas practice. "There were no arm's-length transactions between parties for virtually any aspect of Mexico's oil industry. There is going to be a multiplying effect of requirements for legal work."

The Mexican government this week finalized legislative reforms that open up its oil industry to private and foreign investment. It also laid out a road map for energy firms to grab a piece of Mexico's vast oil and gas reserves: Model forms of contracts will be unveiled later this year, with bidding on reserves not held by state-owned Petroleos Mexicanos — also known as Pemex — and the awarding of contracts in 2015.

While the liberalization of Mexico's oil and gas sector will lead to a flood of investment and associated legal work, it'll be a slow-moving flood, attorneys say.

"Even though the laws were published earlier this week, there's still a long list of pending items that need to be completed for projects to begin, and once those projects do begin, they'll also be developed gradually," said Gabriel Ruiz, a Thompson & Knight LLP partner based in Monterrey, Mexico. "But we can foresee in 10 years, the legal landscape for oil and gas activities in Mexico will be significantly changed from what it is now."

Here are the legal services that attorneys say will be most in demand as energy companies re-enter Mexico after a 75-year absence:

### **Oil & Gas Contract Work**

Joint operating and production sharing agreements, operating licenses and permits, farm-out deals — these and other contracts form the legal spine of the global oil and gas industry. But that hasn't been the case in Mexico, where every deal has flowed through Pemex since 1938.

"You couple that with the fact that there's no meaningful, local institutional knowledge in the home country where the reforms are taking place," said Carlos Sole, who co-chairs Baker Botts LLP's Latin America practice. "They've had intellectual exposure to what production project agreements and licenses

entail, but never the practical experience within Mexico.”

Drafting and executing such contracts from scratch will be the most pressing legal need, attorneys say. There are generally accepted practices in crafting an oil and gas contract — the biggest challenge for attorneys will be making sure the end result jibes with existing Mexican law and the brand-new regulatory structure unleashed by the oil and gas reforms.

“You need to Mexicanize it, so to speak, to make it fully compliant with Mexican law and regulations,” Valera said.

### **Regulatory Work ... and More**

With a brand-new regulatory scheme in place, it’s a given that regulatory attorneys will be quite busy. Energy firms entering the sector will be constantly dealing the Mexican energy ministry, the newly created hydrocarbon commission known as CNH, and other agencies.

But the nature of the reforms makes the government a business partner as well, attorneys say. While Pemex has lost its exclusive grip on Mexico’s oil and gas — and private companies are not required to contract with the company in order to carry out operations — it retains a considerable home-field advantage and was granted rights to all the reserves it wants to develop by the energy ministry this week.

“You still have Pemex providing a huge overlay in terms of market participation, whether it’s on its own or as a joint venture partner,” Akin Gump Strauss Hauer & Feld LLP partner Dino Barajas said.

But partnering with the government on an oil and gas development deal isn’t necessarily a blank slate. Foreign oilfield service companies have operated in Mexico for several years, and Barajas says lessons can be learned from public bidding and contracting guidelines for other sectors of the Mexican economy that were put into place in the early 1990s.

“From a legal perspective, one of the most important skill sets to have is simply having the experience of dealing with a public agency in Mexico,” Barajas said. “Investors will need to understand how the contracts work, as well as the limitations and protections that are in place for contracting with the government.”

### **Cross-Border Joint Venture Work**

Pemex isn’t the only Mexican energy company that foreign energy firms will look to partner with. Forming joint ventures with other companies — oilfield service firms, infrastructure conglomerates, to name a couple — could be vital in securing oil and gas development rights and moving projects forward, attorneys say.

“There are a number of very important and well-funded Mexican companies that have anticipated this [reform] for several years now,” said Michael Fitzgerald, who heads Paul Hastings LLP’s Latin America practice. “Those companies will be joint venturing with large U.S. companies, because there is a perception that when it comes for bidding for development prospects, or doing business with Pemex, there will be a local bias toward awarding contracts to Mexican companies.”

But setting up a cross-border JV isn’t just about the partners agreeing on the terms. The energy reforms establish a framework of how JVs have to be structured, from determining which partner holds the rights

to a production contract to which partner is responsible for executing the contract, attorneys say.

“When you have a company that will partner with a Mexico company, the JOA will have to be adjusted to apply to that specific structure,” Ruiz said.

### **Project Finance Work**

You’ve got your bid and contract in hand for a slice of Mexico’s oil and gas reserves. Now, how do you go about developing it?

The global energy giants will likely be able to finance projects right off their balance sheet, but other companies will have to hit the capital markets, attorneys say.

“One thing that’s unique about Mexico is that it has a robust local market of financial institutions,” Sole said. “You’ll have that and international capital that’s available for financing projects, as well as private equity interests.”

But attorneys won’t only have to shepherd financing for exploration and production projects. They’ll also have to help clients secure financing for pipelines, processing plants and other midstream infrastructure to get all the newly produced oil and gas to market, as well as power plants and transmission lines for any electricity produced — Mexico’s energy reforms also liberalized its electricity industry.

“Even before you see oil coming up from the ground, you need to have a very robust investment plan to develop the infrastructure necessary to transport oil, gas and electricity,” Fitzgerald said.

### **Employment, Environmental, Real Estate and Tax Work**

Like most everything else prior to the energy reforms, the nuts-and-bolts legal issues facing energy companies — environmental permitting, employment issues, land use — flowed through Pemex. Now, attorneys will have to guide foreign companies through Mexican environmental, labor and real estate law.

“Environmental and real estate legal issues — they’re not used to being handled in Mexico, because Pemex handled all the permitting and right-of-way issues,” Ruiz said.

Navigating the country’s tax regime will also be a legal necessity, with new tax obligations on upstream activity a significant part of the government’s reforms, attorneys say.

“That’s one of the first things foreign companies ask for: counseling on the tax regime,” said Jose Antonio Prado, a former legal official at Mexico’s energy ministry and Pemex who is now a Mexico City-based partner at Holland & Knight LLP. “There will be a special tax regime for exploration and production in relation to the hydrocarbon sector, and it will be important to have counseling [on that regime].”

--Editing by Jeremy Barker and Patricia K. Cole.