

Mexico City, October 18th, 2021.

## **Movimiento Ciudadano representatives files a constitutional amendment that seeks to prohibit Fracking and Enhanced Recovery.**

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**Dear clients and friends,**

On October 7th, 2021, the political party Movimiento Ciudadano submitted before the Chamber of Deputies, an initiative to amend the Mexican Constitution, seeking to prohibit hydraulic fracturing ("*fracking*") and enhanced recovery activities (the "Bill"). Such Bill seeks to prohibit any Exploration & Exploitation activities ("E&E") that involve fracking or any other enhanced recovery activities deemed contrary to the environment's integrity.

The Bill defines fracking as "*[T]he stimulation treatment carried out in oil or gas wells that are in low-permeability reservoirs, which consists in the injection of a special fluid that is pumped at high pressure and at a high pumping rate, in order to produce fractures in formations that allow the easy release of liquid or gaseous hydrocarbons*".

In the introduction of the Bill, the Parliamentary Group states that fracking and related activities to such technique cause several environmental damages, including both atmospheric and groundwater contamination, coupled with the excessive use of water which cannot be treated and recovered on a hundred-percent rate, thus depriving the communities near said work centers of such liquid, with special emphasis on communities that already have a high or very high degree of marginalization.

Likewise, in their explanatory statement the Group points out to studies that have determined that fracking has effects on the female populations that live near the work centers, among which there are risks to pregnant women due to premature births or high-risk pregnancies, spontaneous abortions or delayed development of the fetus, as well as an increase in the probabilities of generating diseases such as cancer, nervous, immune and cardiovascular system problems derived from the substances that these enhanced production activities generates.

It is important to point out that the current legislation allows Permit Holders to carry out Hydrocarbon E&E activities through fracking, by obtaining a permit granted by the National Hydrocarbons Commission ("CNH"), and by filing a Notice of Change of Operations before the National Agency for Industrial Safety and Environmental Protection of the Hydrocarbons Sector ("ASEA"). To date, there are various companies carrying out these activities in on-land unconventional reservoirs, which are mainly concentrated in the states of Veracruz, Tamaulipas, San Luis Potosí, Coahuila and Nuevo León.

With respect to existing permits and contracts, the Bill contemplates in its Transitory Articles that, upon its entry into force, the CNH must establish an action plan for the cancellation of those contracts that provide for the extraction of liquid or gaseous hydrocarbons using fracking.

As it is a proposal for Constitutional amendment, it is necessary that it be approved by two-thirds of the Congress (Chamber of Deputies at least 333 Deputies; and Senate, at least 85 Senators) and at least 17 Local Congresses.

It is important to point out that to this date it is not possible to take actions to challenge the Bill, and it is also necessary to consider that Federal Courts have held the criteria that Permit Holders affected by the amendments (Electricity and Hydrocarbons sector) must wait until the secondary provisions are published and demonstrate any damage derived from such modification before initiate any actions.

However, if it is approved under the proposed terms, we consider that there are sufficient elements to consider the existence of violations of other constitutional provisions and international treaties, opening the door for challenging the Bill through *acciones de inconstitucionalidad* (unconstitutionality actions), and by the private sector, through *amparo* lawsuits and/or administrative procedures aimed at protecting the interests of the participants in the sector; as well as the possibility of initiating dispute resolution procedures before international organisms. Once the final version of the Bill is approved and published, we will be able to analyze and propose possible actions and mechanisms to challenge it.

The attorneys of Mañón Quintana will be glad to discuss or address any questions related to the scope of this Bill.

**Atentamente,**

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