

## HONDURAN CONGRESS PASSED A LAW CALLING FOR THE RENEGOTIATION OF RENEWABLE ENERGY TARIFFS AND POTENTIAL NATIONALIZATION OF ENERGY PLANTS

Local media reported that on May 12, 2022, the Congress of Honduras approved in record time a legislative initiative by President Xiomara Castro seeking to enable the Government to renegotiate electricity tariffs with renewable energy generators ("**New Energy Law**"). Although the New Energy Law was not made public in the Official Gazette at that time, it was reported that under this new legal framework, if a generator refuses to renegotiate, then the Government may take over the assets following payment of a "just compensation" with government bonds. The compensation and its valuation procedure of the New Energy Law are unclear.

### HONDURAS AIMS TARIFF REDUCTIONS AT RENEWABLE ENERGY GENERATORS AND PUTS NATIONALIZATION OF RENEWABLE ENERGY GENERATORS ON THE TABLE

On May 4, 2022, recently elected President Xiomara Castro sent a legislative initiative in an attempt to reduce the deficit of the National Company of Electric Energy ("**ENEE**") and make energy tariffs more affordable. On May 12, 2022, the Congress passed the New Energy Law in a voting session held in record time. Although it has not been published in the Official Gazette of Honduras yet, several local news outlets reported that the New Energy Law grants extensive powers to ENEE and the Honduran Government to:

- Renegotiate the tariffs of purchase power agreements ("**PPAs**") with renewable energy generators of thermal, solar and wind sources.
- In the event the renegotiations fail, terminate the PPAs and take over the generators' assets, paying a just compensation (justiprecio) with government bonds. However, it seems that the New Energy Law does

#### Key issues

- The Congress of Honduras passed the New Energy Law enabling the Government to renegotiate tariffs under renewable energy PPAs.
- The New Energy Law also enables the Government to nationalize plants if generators refuse to renegotiate tariffs.
- The New Energy Law does not specify the terms of the compensation in the case of nationalization but indicated that such payment would be made with government bonds.
- The New Energy Law has also targeted certain energy projects and moved to terminate the contracts that gave rise to them.

not specify how to calculate the compensation and does not provide any guidelines or criteria in this respect.

- Derogate the contract under which Honduras approved the renewable energy projects of *Los Llanitos, Jicatuyo, Ulúa, Santa Bárbara, el Tablón, Chamelecón; Quebrada Relumbrosa, La Ceiba, Atlántida; Texiguat, and El Paraíso*, among others.
- Limit private sector investment in energy generation, transmission, and distribution to the State's investment in those three areas.
- Eliminate the *Organismo Operador del Sistema* (System Operator Organism) – the company in charge of fixing energy prices and dispatching energy and replacing it with the state-controlled *Centro de Despacho de la ENEE* (ENEE'S Dispatch Center).

## **CURRENT SITUATION**

The scenario for energy generators is far from ideal. The New Energy Law raises concerns of a potential and imminent renegotiation of PPAs under an unlevel playing field, with the fallback scenario of the generator's refusal to lower tariffs being the nationalization of their assets in Honduras. Of additional concern is that the New Energy Law does not provide any variables to calculate the compensation in the case of nationalization of the assets, nor does it state whether such compensation will comprise the revenue projections of the nationalized plants or only their net value. In addition, the fact that the New Energy Law contemplates that the compensation will be paid with government bonds raises potential concerns, not only on the liquidity of the eventual compensation that generators would receive, but especially because ENEE has failed to place a large portion of the bonds issued in 2020 to reduce its deficit, meaning that ENEE could potentially use the prerogatives under the New Energy Law as an opportunity to introduce its bonds to the market.

Several companies active in the energy industry are monitoring the situation with great concern. The New Energy Law could potentially jeopardize the investments made by domestic and foreign companies in the renewable energy sector.

## **PROTECTIONS POTENTIALLY AVAILABLE UNDER BILATERAL INVESTMENT TREATIES AND FREE TRADE AGREEMENTS**

These developments should serve as a timely reminder to all investors in Honduras of the protections potentially available to them and their investments under Honduras' network of bilateral investment treaties ("**BITs**") and free trade agreements ("**FTAs**"). BITs and FTAs typically afford foreign investors with protections against nationalization and other measures that otherwise affect or deprive investors of the economic use of their investments.

Honduras has more than a dozen BITs and FTAs in force with third States throughout the world, granting enhanced protections to the investments made in Honduras by nationals of the contracting States. Therefore, many investors currently benefit from protection under these instruments.

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To determine if an investment is protected under one of the BITs or FTAs currently in force in Honduras, it is crucial that investors engage qualified international counsel to perform a legal analysis of the investment treaty protections available to their investments in the country and of the potential implications of the recent proposed energy reforms.

Our bilingual and culturally fluent team of legal experts is ready to help you navigate these uncertain times and provide you with the best legal advice to protect your investments in Honduras.

## CONTACTS



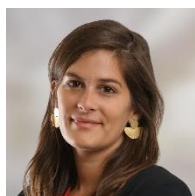
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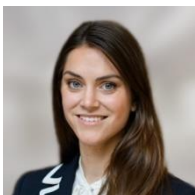
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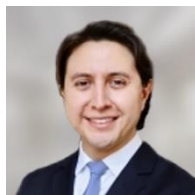
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