



## Doing business in Mexico - webinar series:

The new normal for trade and investment in 2021

Key takeaways by our panelists

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# Introduction

In the second installment of our “Doing Business in Mexico” webinar/CLE series, a distinguished panel of former senior government representatives and Mexico geopolitical commentators focused on “The New Normal for Trade and Investment in 2021-2024.” This short report highlights the main insights and key takeaways they shared for companies looking to trade and invest in Mexico.

## Moderator



**Nicolas Borda**  
Partner, Houston

Nicolas Borda is an international business transaction lawyer with a focus on energy and natural resources, infrastructure, and Latin America, with a particular focus on Mexico. His energy practice covers all facets of oil and gas (upstream, midstream, and downstream), power and renewable energy projects. He advises clients on international and cross-border transactions, including regulatory and compliance matters, mergers and acquisitions, corporate matters, joint ventures, energy infrastructure project development, government procurement, public policy, NAFTA/USMCA and international trade. Nicolas has represented several governments in the capitalization of strategic assets and has been involved in many energy projects and transactions throughout Latin America.

## Panelists



**Rosanety Barrios**

Rosanety Barrios, an independent analyst on Mexican energy matters and former head of the Natural Gas and LPG Transport Department at Mexico’s Energy Regulatory Commission.



**Ben Cahill**

Ben Cahill, a senior fellow at the Center for Strategic and International Studies focusing on geopolitical risk in the oil market and the economics of oil-producing states.



**Bosco Marti**

Bosco Marti, the Director of Institutional Affairs and Communications at ALEATICA, the first pure transportation infrastructure operator to have a region-wide presence in Spain, Italy and key Latin American markets.



**Kenneth Smith Ramos**

Ken Smith, a partner at AGON, a Mexican consulting firm specializing in competition, regulatory affairs and international trade and Mexico’s chief negotiator for the modernization of the North American Free Trade Agreement (NAFTA) that led to the signing of the U.S.-Mexico-Canada Agreement (USMCA).

## Webinar recap

Prior to the panelist roundtable Q&A, Borda provided a recap of significant events that occurred in 2020, including, among other noteworthy topics, the COVID-19 pandemic, the U.S.-China Trade War, Mexico's recent energy measures and the *amparos* brought in response thereto, and the entry into force of the USMCA. Finally, he concluded with a brief highlight on new developments in the renewable energy sector. Notwithstanding economic uncertainties in the sector, there remains a strong investor appetite for renewable energy projects, Borda said, noting that from January 2020 to October 2020, auctioned renewable capacity was 15 percent higher than it was during the same period in 2019. Moreover, it was observed that, driven in large part by China and the United States, net installed renewable capacity is expected to grow by nearly 4 percent globally in 2020, reaching almost 200 gigawatts.

After highlighting the 2020 key events and renewable energy sector highlights, the panelists kicked off their discussion, which centered on topics ranging from the impact of the new Biden-Harris administration on the U.S.-Mexico trade relationship, to infrastructure development opportunities in Mexico, to U.S.-Mexico energy policy under the Andrés Manuel López Obrador (AMLO) and Biden-Harris administrations.

## Key observations

### Energy policy

- Mexico's energy policy under the AMLO administration can be described as a policy of "sovereignty." Under this model, all fuels consumed in Mexico must be generated by PEMEX (the state-owned oil and gas company), and all power/electricity must be generated by the CFE (the state-owned electric utility company). In adopting this model, the current Mexican administration has signaled that competition (including by foreign investors) with state-owned companies is unwelcome, notwithstanding the fact that stifling competition runs contrary to Mexico's constitution.
- Renewable energies and climate policy are going to be significant priorities under the Biden-Harris administration, representing a large shift from previous administrations. As Biden became the Democratic nominee, his policies on energy and climate policy evolved and took on aspects of other progressives, such as Bernie Sanders and Elizabeth Warren. Taking a more holistic view than the Trump administration, the Biden-Harris administration views the energy and climate landscape as an opportunity for job creation, economic competitiveness and innovation.

## The USMCA vs NAFTA

- The USMCA preserves free trade and enhances the NAFTA in several respects, including the introduction of new disciplines that are essential to the global economy (many of which did not exist at the time the original NAFTA was negotiated), and the preservation of dispute settlement mechanisms. However, these are some key modifications:
  - USMCA adds restrictions for investors who must file legal actions before local courts with respect to non-government contracts prior to an ISDS dispute.
  - USMCA does not provide for indirect expropriation in the event of a non-discriminatory regulatory action in connection with health, welfare, safety and environment.
  - USMCA, unlike NAFTA, has an automatic joint review mechanism every 6 years. USMCA, unlike NAFTA, expires in 16 years if not extended by the parties.
  - Labor and Environmental matters are no longer side agreements but rather are new fully independent chapters in the USMCA subject to dispute settlement with greater enforceability measures.
  - Trade remedies (anti-dumping and countervailing duties) under NAFTA Chapter 19, now USMCA Chapter 10, remain the same.
  - ISDS Disputes under NAFTA Chapter 11, now USMCA Chapter 14, have been restricted towards investors. ISDS between USA and Canada were eliminated. ISDS between Canada and Mexico will be governed by ISDS provisions of the CTPP.
  - State to State dispute settlement under NAFTA Chapter 20, now USMCA Chapter 31, was improved in the way panelists are selected.
- Significantly, with respect to the energy sector, the original NAFTA did not account for private energy investment in Mexico due to constitutional prohibitions that existed at the time of its negotiation. The USMCA, however, contains special provisions that incorporate and consolidate Mexico's 2014 energy reform initiatives. Importantly, the USCMA also provides that any further liberalization under the domestic laws of Mexico's energy sector is automatically incorporated under the USMCA and that Mexico is prohibited from negating any such liberalization measures. These provisions are significant in laying the groundwork to provide opportunities and legal certainty for investment in the sector.
- The USMCA has the potential to increase bilateral trade across the entire value chain. A lot of the new elements in the USMCA vis-à-vis the NAFTA look to create further opportunities in this respect, including the reduction of the costs of conducting cross-border transactions, trade facilitation procedures that reduce inspection times for goods crossing the border, and utilizing information technology to reduce border paperwork and bureaucracy. Furthermore, new provisions on intellectual property help to promote innovation, the adoption of technology, and the promotion and protection of patents. Opportunities exist to increase value across a variety of sectors, including those that benefited under the original NAFTA, such as automotive and aerospace manufacturing. Under the USMCA, these sectors will continue to benefit not only from trade facilitation measures, but also from efforts made to modernize the agreement in areas such as digital trade and cloud computing.

## Infrastructure investment opportunities

- Mexico remains a country with solid fundamentals and a clear need for infrastructure development. The sector is still critical to Mexico's economic recovery, leading some investors to continue to expand their investment portfolio within the country. Nevertheless, project-financing issues remain. Historically, the challenge for project financing in Mexico has not been the lack of resources, but rather the lack of projects. Currently, the COVID-19 pandemic is further complicating project finance initiatives. Local banks are more timid to invest, but this is temporary, and there is still investment appetite for good projects that are economically sound.
- The North American Development Bank (NADB) has a unique opportunity to play a significant role under the Biden-Harris administration. The NADB was one of the first green banks created, and its primary focus is on financing environmental projects. It has a record of accomplishment for realizing green projects alongside other investors. Under a Biden-Harris administration focusing on job growth, innovation, and clean energy, the NADB has an opportunity to play a bigger role than it did under previous administrations.

For additional information, please contact:



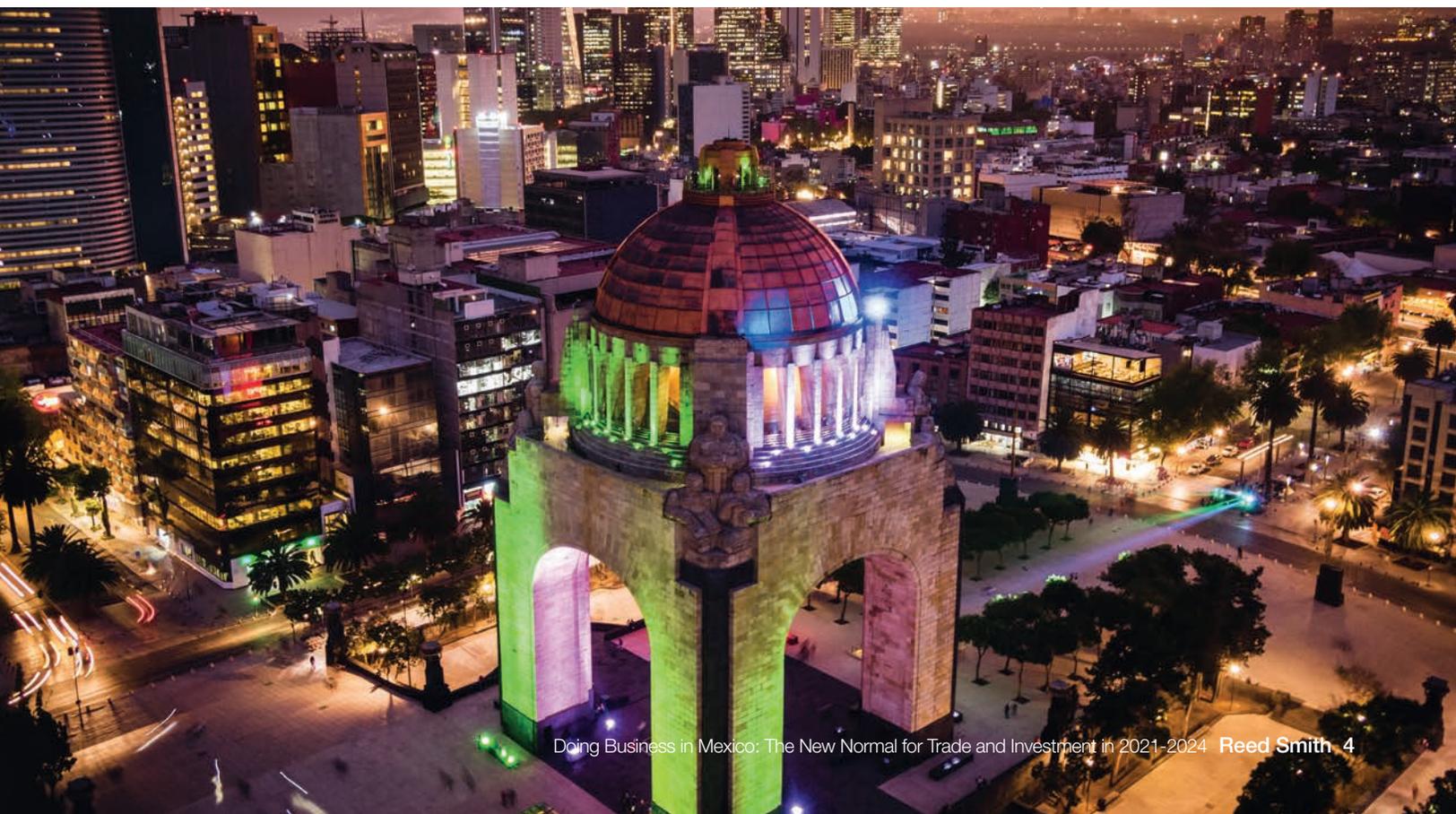
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### About our Latin America Business Team

The success of our Latin America Business Team comes from our utilization of lawyers across our offices, who are licensed in civil and common law jurisdictions to successfully manage sophisticated international transactions and proceedings, bridging legal systems, and helping to resolve complex legal issues. The breadth and depth of our Latin America Business Team leverages our native multilingual speakers, dual-qualified and bi-cultural lawyers, and our deep relationships with strategic partners in the region to avoid traps and pitfalls and deliver results. We are also proud to be recognized as a top international law firm doing business in Latin America by *Latinvex* in 2020, as well as being ranked in the top tier for our international arbitration practice in Latin America by *Legal 500* and *Chambers*.



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