Larry Pascal in the International Newsletter: Energy Issues Under the United States-Mexico-Canada Agreement

By Larry B. Pascal | December 14, 2018

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With the recent announcement of the revamped free trade agreement among the United States, Mexico and Canada, investors can point to some positive developments in the North American energy sector and possibly enhanced efficiencies and integration among the countries. Some highlights of the new agreement are discussed below.

Impact of Energy Issues on USMCA

In discussing the impact on the treatment of energy issues under the United States-Mexico-Canada Agreement ("USMCA"), it is important to acknowledge that the final text of the treaty has not been released. Nevertheless, certain trends, primarily positive from a foreign investor perspective, can be gleaned. For example, the U.S. Trade Advisory Committee on Energy and Energy Services, dated September 27, 2018, provided comments to the United States Trade Representative Office ("USTR") on the energy aspects of the USMCA. The Advisory Committee comments include the following:

> a. approval for the investor-state dispute resolution (ISDS) protection for expropriation claims under government contracts being added for investments in the oil and gas, infrastructure, energy generation, and telecommunications sector between the U.S. and Mexico (albeit with Canada and Mexico dispute resolution procedures being governed by the terms of the Trans-Pacific Partnership to which both parties are signatories and hence this aspect was left out of the USMCA);
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> b. concern for the relatively short period for the sunset clause (16-year term), given the long-term nature of investments in the energy sector;
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> c. support for deepening commercial ties in the cross-border fuels and energy sector; and
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> d. support for harmonization of energy efficiency measures standards through working groups to be established. …

Excerpted from the State Bar of Texas International Law Section's *International Newsletter*. To read the full article, click here.