

# Is it possible to contain the damage of the judicial reform for investors?

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## The Question

For many, the constitutional judicial reform set for September will represent a radical and irreversible deterioration of legal certainty for investors in Mexico (see Annex). While the Mexican judicial system had ample room for improvement, at the federal level (and in some states) it operated in a reasonably professional manner. In recent years, federal courts and tribunals allowed the electricity sector to defend itself against arbitrary and unconstitutional government actions. The judicial reform radically alters this scenario: new judges, magistrates, and Supreme Court justices will be elected by the public based on lists largely drawn up by the Executive and Congress—both under the control of the same government that they may later need to rule against (see Verbatim).

However, some believe that the worst effects of the reform could be mitigated during its implementation. Pressure from the U.S. and foreign investors threatening arbitration, along with international human rights courts, will increase. The key issue in this reform is who ends up on the candidate lists for judges, magistrates, and justices. Investors would feel more at ease if the secondary legislation, the Senate's call for candidates, and the evaluation committees establish rules or criteria favoring candidates from the judicial career track who are committed to legal certainty. The lists proposed by President Sheinbaum and by Congress, dominated by her party, will be especially important for investors, particularly the lists for judges and tribunals that handle specialized matters like energy, infrastructure, and taxation. Most crucial will be the lists for the Supreme Court and the new Judicial Disciplinary Tribunal (which still requires legislation to define its structure and functions), since these will steer the new justice system created by the reform. Even if qualified, impartial candidates are nominated, they will still be exposed to political pressures from which they were previously more shielded.

Damage control is possible, but difficult. A positive sign was the government's invitation to the Judiciary to propose secondary legislation and establish a transition committee via Minister Batres (see Verbatim). However, two major challenges lie ahead: one technical and one political. The reform's implementation timeline is extremely tight (see Ex Post). The call for candidates must be published within a month, secondary legislation must be ready in three months, and candidate lists must be finalized by February. But the real obstacle is political: will Claudia Sheinbaum's government and the party-dominated Congress have the political will to appoint investor-friendly judges? After all, one of AMLO's key motivations for the judicial reform is precisely to prevent judges from blocking his statist reforms in energy or mining, or from halting his efforts to collect taxes from business elites. Reforming the judiciary to eliminate judges who uphold legal certainty in fiscal matters or protect the acquired rights of energy investors aligns with AMLO's political goals, though Sheinbaum may have different priorities and a different approach to wielding power.

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## Ergo

No damage control will take place without political pressure. One clear takeaway from the absence of negotiation around the judicial reform is that it's very difficult to negotiate from a position of weakness. The opposition was weak, divided, and composed of individuals vulnerable to coercion. The strongest resistance came from within the judiciary, civil society, business organizations, the U.S., and from financial markets, credit rating agencies, and international media. These pressures are what explain the government's willingness to open a negotiation table with the Supreme Court.

However, the judicial reform has already incurred an unavoidable cost. In both politics and law, form is substance, and this constitutional judicial reform was pushed through in an unclean manner, aimed at subordinating the judiciary, with major damage to Mexico's international reputation. And unfortunately, any attempt at mitigation will be just that: damage control. Even if the more moderate members of Sheinbaum's team try their best and succeed in announcing new investments (after all, Mexico will still be part of the USMCA and retain investment-grade status through 2024 and 2025), the headline economic figures in the early years of her administration will necessarily be underwhelming as a result of these reforms. But without any effort at damage control, things could deteriorate much further, and much faster.

## Ex Post: Publication and implementation of the judicial reform

**Sept 13, 2024:** Federal Congress completes the official tally and declares the constitutional reform approved.

**Oct 17, 2024:** The Senate issues the call for judicial candidates to register.

**Dec 17, 2024:** Deadline for Congress to pass the necessary secondary legislation.

**June 6, 2027:** Elections held for the remaining 50% of federal judges and magistrates.

**Sept 17, 2024:** The Executive branch promulgates and publishes the constitutional reform.

**Oct 30, 2024:** Deadline to file an action of unconstitutionality.

**June 1, 2025:** Elections held for Supreme Court justices, electoral magistrates, and 50% of federal judges and magistrates.

## Verbatim

*"Imagine you are the country manager for a multinational company, fighting a state-owned competitor which is competing unfairly. Your lawyers say you have a strong case but the judge is an ally of the governing party, the regulator is an official from the ministry that owns your competitor and the tax authority is threatening to jail you while it checks whether your invoices might be fraudulent."*

**-Strategy for Mobilizing Sustainable Finance, Ministry of Fianance, September 2023**

*"I urge caution [...] It is up to the Court to take on a leadership role [...] It is necessary to create the conditions that allow for constructive participation in the new democratic era that will shape this branch of government [...] I would like to propose [...] Drafting a proposal for reforms to secondary legislation."*

**-Strategy for Mobilizing Sustainable Finance, Ministry of Fianance, September 2023**

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## Annex. International reactions to the judicial reform.

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Actor / Date	Quote
Letter of business organizations to the US State Department (August 21)	"Its approval would create a state of uncertainty in the trade relationship between Mexico and the US, and the review of the USMCA in 2026 could be affected [...] Without a fair and predictable recourse for investors, the implementation of the USMCA will face increased pressures".
Ken Salazar US Ambassador to Mexico (August 22- September 5)	"The direct and political election of judges will neither resolve corruption nor strengthen the Judiciary [...] it would undermine efforts to achieve economic integration in North America [...] it removes the requirements for having the most qualified judges [...] The viability of the USMCA should be analyzed."
HSBC (August 29)	"Our projections assume that there will be modifications to the reform to address investors' concerns. If adjustments are not made, the outlook for the Mexican peso would change significantly."
Moody's Ratings (September 11)	"The reform will have a significant impact on Mexico's sovereign credit rating, a moderate effect on rated financial and non-financial companies, a moderate impact on energy and infrastructure companies, and a relatively low effect on banks [...] it will weaken checks and balances, which could jeopardize Mexico's economic and fiscal strength."
Congressmen letter to the USTR (September 5)	"The proposed reforms seem to undermine american investors' access to a stable, predictable, and impartial regulatory framework [...] As we prepare for the USMCA review in 2026, it is imperative that each partner country respects the integrity of the agreement".
US House of Representatives Resolution (September 10)	"There is concern that [...] they could have a long-term negative impact on democratic institutions [...] We express deep concern that the reforms may contradict commitments made under the USMCA, putting at risk important shared economic and security interests."