

# RENEWABLE ENERGY

## Mexico



# Renewable Energy

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Quick reference guide enabling side-by-side comparison of local insights into market and legal frameworks; treatment of environmental attributes; government incentives and authorisations; dispute resolution; utility-scale renewable energy projects; hydropower; distributed generation; energy storage; foreign investment considerations; offtake arrangements; decommissioning; transaction structures; and recent trends.

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## MARKET FRAMEWORK

### Government electricity participants

Who are the principal government participants in the electricity sector? What roles do they perform in relation to renewable energy?

The principal government participants in the electricity sector in Mexico are the Ministry of Energy, the Energy Regulatory Commission, the National Energy Control Center (CENACE) and the Federal Electricity Commission.

The Ministry of Energy is the principal body of the electricity sector and:

- is in charge of establishing, conducting and coordinating public policy in connection with electricity; and
- has the power to grant social impact authorisations required for projects within the electricity industry, including those related to renewable energy.

The Energy Regulatory Commission is the key regulatory body in the electricity sector. The Commission has powers to issue regulation:

- on the carrying out activities within the value chain of the electricity industry, including transmission, distribution and supply;
- for the operation of the wholesale electricity market;
- on the carrying out of small-scale distributed generation projects; and
- on tariffs for transmission, distribution and other services, among other matters.

In addition, the Commission has the authority to grant permits to those individuals and entities interested in producing and commercialising power and other electricity-related products.

CENACE is the technical operator of the national grid and is the entity in charge of operating the wholesale electricity market. In this context, CENACE:

- determines the dispatch of power plants;
- gives instructions regarding actions required to maintain reliability, quality and continuity in the electricity grid; and
- calculates the prices of electricity and other related products, and processes all payments and charges related to them within the wholesale electricity market.

In addition, CENACE carries out interconnection studies to determine the infrastructure that power plants and consumption points need to connect their facilities to transmission and distribution grids.

The Federal Electricity Commission is the state-owned electricity utility that participates all along the chain value of the electricity industry. The Commission carries out generation, transmission, distribution and commercialisation of electricity through subsidiaries and affiliated entities that follow certain rules of vertical and horizontal legal separation. The Commission also plays a main role in the trading of hydrocarbons (natural gas, coal and oil products) through the affiliate entity CFenergía, and provides telecommunications services.

The electricity industry in Mexico is regulated at federal level. Therefore, no state or municipal energy-related authorisations are required for producing or commercialising electricity. However, certain state or municipal

authorisations could be required for the construction and operation of power plants as industrial facilities, including those related to the environment, urban development, urban impact and civil protection.

*Law stated - 12 July 2023*

### **Private electricity participants**

Who are the principal private participants in the electricity sector? What roles do they serve in relation to renewable energy?

Private participation in the electricity sector in Mexico has increased significantly in recent years. Private participation in generation activity started with the publication of the Law for the Development of Renewable Energy and Energy Transition Financing on 28 November 2008, and was boosted in generation and commercialisation activities by the constitutional reform in the energy sector published on 20 December 2013.

Regarding the generation of electricity, according to the Development Programme of the National Electric System 2023–2037, Mexico had an installed generation capacity of 87,130MW (megawatts) as at December 2022, of which 44,533MW (51 per cent) was owned by the Federal Electricity Commission, 15,898MW (18 per cent) was owned by private independent power producers and 25,778MW (31 per cent) was owned by other private generators.

In connection with the commercialisation of electricity, although the state-owned electricity utility Federal Electricity Commission is the sole supplier for basic users, several private qualified suppliers and marketer non-suppliers participate in the wholesale electricity market. CENACE reported that 53 qualified suppliers and 21 marketer non-suppliers were operating in the wholesale electricity market as at April 2023.

*Law stated - 12 July 2023*

### **Definition of 'renewable energy'**

Is there any legal definition of what constitutes 'renewable energy' or 'clean power' (or their equivalents) in your jurisdiction?

The Electricity Industry Act and the Energy Transition Act define both 'clean energy' and 'renewable energy'. According to article 3, section XXII of the Electricity Industry Act, 'clean energy' consists of those sources of energy and processes of electricity generation in which emissions or waste (if any) do not exceed the thresholds established in the regulation issued thereunder. Article 3 lists certain sources and processes considered to be clean energy, for example wind, solar irradiation, tidal energy, geothermal, bioenergetics (in terms of the Act for the Promotion and Development of Bioenergetics), biogas, hydrogen, hydropower, nuclear power, efficient cogeneration, energy produced in sugar mills and energy produced in thermal power plants using the process of carbon capture. In some cases, to be considered clean energy, such sources and processes are required to comply with the efficiency criteria or emissions thresholds established by the Energy Regulatory Commission or the Ministry of Environment and Natural Resources.

The Energy Transition Act defines 'renewable energy' as energy obtained from natural phenomena or from processes or materials that can be transformed into energy by humans and that are naturally regenerated and, therefore, are available in a continuous or recurrent manner, and whose production processes do not cause emissions. Among the sources that are considered renewable energy are wind, solar irradiation, the movement of water on natural courses or artificial courses with existing reservoirs with a generation capacity up to 30MW or with a power density more than 10 watts per square metre, ocean energy, geothermal and bioenergetics (in terms of the Act for the Promotion and Development of Bioenergetics).

*Law stated - 12 July 2023*

## Framework

What is the legal and regulatory framework applicable to developing, financing, operating and selling power and 'environmental attributes' from renewable energy projects?

The Electricity Industry Act is the law that establishes the main rules for developing, operating and selling power from renewable energy projects. It establishes that all power plants with a capacity of 0.5MW or greater require a permit from the Energy Regulatory Commission. It also establishes that the sale of power and other products in the wholesale electricity market must be performed through electricity hedging agreements. Additionally, the Act establishes that the interconnection of the power plants to the electricity grid requires the performance of interconnection studies by CENACE and the execution of an interconnection agreement with the Federal Electricity Commission. Furthermore, it establishes the existence of Clean Energy Certificates as a mechanism to promote clean energy and the basis of the Clean Energy Certificates market.

The wholesale electricity market operates in accordance with the Wholesale Electricity Market Rules, which are composed of the Wholesale Electricity Market Bases, regulatory manuals and other guidelines. Such regulation establishes rules for the operation of the day-ahead and real-time electricity markets, for the invoicing and payment processes within the wholesale electricity market and the process of interconnection of power plants and loads to the electricity grid, among others.

The financing of power plants is not regulated in a specific manner. Therefore, the execution of loan agreements, security documents, trusts and other financing documents is governed by, for example, the Trade Code and the Law of Debt Securities and Credit Operations. Note that foreign law, such as New York law, can also govern certain financing documents (eg, loan agreements) of power plants.

*Law stated - 12 July 2023*

## Stripping attributes

Can environmental attributes be stripped and sold separately?

Yes. Any individual or entity – regardless of whether such individual or entity participates in the wholesale electricity market – can freely trade environmental attributes, such as Clean Energy Certificates. Such certificates are commonly traded through mid-term and long-term electricity hedging agreements.

The offer in the Clean Energy Certificates market is created by granting clean energy generators one Clean Energy Certificate per megawatt per hour produced without using fossil fuels. The demand consists of the obligation of suppliers and other obliged entities to demonstrate that a certain percentage of the power consumed in their loads comes from clean energy through the acquisition and settlement of Clean Energy Certificates. The Ministry of Energy publishes the applicable clean energy requisites for each year, which was 13.9 per cent for 2022.

All transactions involving Clean Energy Certificates are carried out within the CEL System, which is managed by the Energy Regulatory Commission. The CEL System is a web platform on which the Commission registers and manages information regarding the generation of clean energy and energy consumption of the obliged entities. Therefore, all individuals and entities interested in trading Clean Energy Certificates must be registered in the CEL System.

*Law stated - 12 July 2023*



## Government incentives

Does the government offer incentives to promote the development of renewable energy projects? In addition, has the government established policies that also promote renewable energy?

Yes. The Energy Transition Act establishes the basis of public policy for the promotion of renewable energy projects. According to the Act, clean energy within the electricity industry must increase gradually in order to accomplish the goals of clean energy generation and reduction of emissions. For that purpose, the government must promote the existence of the appropriate legal, regulatory and tax conditions that facilitate the accomplishment of these goals.

The most important incentives for the promotion of renewable energy projects are the establishment of clean energy obligations and the right of clean energy generators to obtain Clean Energy Certificates, creating a Clean Energy Certificates market. The offer in the Clean Energy Certificates market is created by granting clean energy generators one Clean Energy Certificate per megawatt per hour produced without using fossil fuels. The demand consists of the obligation of suppliers and other obliged entities to demonstrate that a certain percentage of the power consumed in their loads comes from clean energy through the acquisition and settlement of Clean Energy Certificates.

*Law stated - 12 July 2023*

Are renewable energy policies and incentives generally established at the national level, or are they established by states or other political subdivisions?

Yes. In Mexico, the electricity industry is regulated at the national level. Therefore, energy policies and incentives are established not by the states, but on a nationwide basis.

*Law stated - 12 July 2023*

## Purchasing mechanisms

What mechanisms are available to facilitate the purchase of renewable power by private companies?

There are no particular mechanisms that facilitate the purchase of renewable energy projects by private companies. However, private companies are attracted to renewable energy projects considering that:

- power plants with lower production costs (as renewable energy projects) are primarily dispatched in the wholesale electricity market; and
- most of the renewable energy projects in Mexico have been leveraged on long-term electricity hedging agreements executed with offtakers that have good credit ratings.

*Law stated - 12 July 2023*

## Legislative proposals

Describe any notable pending or anticipated legislative proposals regarding renewable energy in your jurisdiction.

There are no pending or anticipated legislative proposals regarding the renewables sector. However, the amendments to the Electricity Industry Act published on 9 March 2021 have not entered into force yet due to all the injunctions granted against them by federal courts. It is worth following-up the status of these injunctions, since the amendments to the Electricity Industry Act would substantially modify the electricity industry in Mexico, including in connection with renewable energy. Among such changes, the possibility of granting Clean Energy Certificates to power plants that were operating prior to the existence of certificates is highlighted, which contravenes the role of certificates in incentivising the development of new renewable generation projects.

*Law stated - 12 July 2023*

### **Drivers of change**

What are the biggest drivers of change in the renewable energy markets in your jurisdiction?

Nowadays, the renewables industry is slowing down due to changes and decisions in the legal and regulatory framework since President Andrés Manuel López Obrador assumed office in 2018. However, the uncertainty in the renewables sector has also increased the interest of new investors in the acquisition of renewable power plants that may be subject of divestment processes.

*Law stated - 12 July 2023*

### **Disputes framework**

Describe the legal framework applicable to disputes between renewable power market participants, related to pricing or otherwise.

Market participants are allowed to agree on the dispute resolution mechanism that would be applicable to their electricity hedging agreement. The most common dispute resolution mechanisms are high-level negotiation, federal or local courts, expert opinion and arbitration. There are no arbitration institutions for energy disputes in Mexico; therefore, parties to electricity hedging agreements commonly resort to international arbitration institutions.

*Law stated - 12 July 2023*

## **UTILITY-SCALE RENEWABLE PROJECTS**

### **Project types and sizes**

Describe the primary types and sizes of existing and planned utility-scale renewable energy projects in your jurisdiction.

The primary types of renewable energy projects are hydropower, wind, solar and geothermal. According to the Development Programme of the National Electric System 2023–2037, the installed capacity of hydropower generation was 12,613MW as at December 2022. The biggest power plant is Presa Chicoasén (owned by the Federal Electricity Commission), with an installed capacity of 2,400MW.

Regarding wind farms, the installed capacity was 6,921MW as at December 2022. Solar installed capacity was 6,535MW. Two important projects are the solar farm Villanueva (Enel) and the wind farm Reynosa (Zuma Energía), with installed capacity of 754MW and 424MW, respectively.

Finally, geothermal power has an installed capacity of 976MW. The most important geothermal power plants are Cerro Prieto, Los Azufres and Los Humeros (all owned by the Federal Electricity Commission).

**Development issues****What types of issues restrain the development of utility-scale renewable energy projects?**

Two main issues are restraining the development of utility-scale renewable energy projects. First, although access to the transmission and distribution grids is subject to an open and not unduly discriminatory access principle, developers of utility-scale renewable energy projects could face disproportional requirements, imposed by the National Energy Control Center, regarding interconnection infrastructure, and could face difficulties in extending governmental authorisations and agreements in the event of delays.

Second, developers of utility-scale renewable energy projects can expect uncertainty in the performance of the Energy Regulatory Commission, which has faced budgetary constraints, a reduction of its workforce and substitution of certain Commissioners. These circumstances have caused changes in the criteria used for decision-making (including for granting generation permits) and cause delays in the response terms established in the applicable regulation for obtaining governmental authorisations and other administrative processes.

Law stated - 12 July 2023

**HYDROPOWER****Primary types of project**

Describe the primary types of hydropower projects that are prevalent.

According to the Ministry of Energy, as at December 2022, the installed capacity of hydropower generation was 12,613MW, corresponding to 105 hydroelectric power plants, 75 of which are owned by the Federal Electricity Commission.

There are 17 hydroelectric power plants operated by private entities in the self-supply scheme that was established in the now abrogated Public Utility Power Act. This scheme consisted in the generation of electricity to satisfy the consumption needs of the partners (offtakers) of a special purpose vehicle incorporated by a generator. However, this scheme cannot be implemented anymore under the regulation currently in force.

Finally, 13 hydroelectric power plants are operated by private entities under the generation regime established by the Electricity Industry Act. Therefore, the energy produced in these power plants is sold in the wholesale electricity market or through electricity hedging agreements freely negotiated between generators and offtakers (such as suppliers, traders and other market participants).

Law stated - 12 July 2023

**What legal considerations are relevant for hydroelectric generation in your jurisdiction?**

For the development of hydroelectric projects in Mexico, it is necessary to obtain a generation permit granted by the Energy Regulatory Commission. The generation permit allows production of electricity in the relevant generation facility, and the operation of the transmission line required to interconnect the power plant to the grid, over a 30-year term.

In addition, a concession granted by the National Water Commission is required to use water to produce power, except if used in small-scale generation projects in terms of the applicable law.

Finally, the regulation considers hydroelectric power plants as 'projects that require a specific location'. Therefore, the

rights of way and real estate required for the development of such power plants must be obtained through the procedure established in Title Second, Chapter VIII of the Electricity Industry Act, and using the templates of agreements published by the Ministry of Energy.

*Law stated - 12 July 2023*

## DISTRIBUTED GENERATION

### Prevalence

Describe the prevalence of on-site, distributed generation projects.

Distributed generation projects in Mexico have been developing significantly in recent years. The possibility to develop distributed generation projects was established in the regulation in 2007 and boosted by the constitutional energy reform in 2013. From 2007 to 2016, only 29,556 distributed generation projects were developed in Mexico. Nevertheless, from 2016 (when the new regulation regarding distributed generation was published) to the end of 2022, 305,428 were developed.

The energy produced in distributed generation projects can be sold (in full or in part) under net-billing or net-metering schemes to basic or qualified suppliers using the template agreements published by the Energy Regulatory Commission.

*Law stated - 12 July 2023*

### Types

Describe the primary types of distributed generation projects that are common in your jurisdiction.

The most common distributed generation technology in Mexico is solar. According to the Energy Regulatory Commission, 334,984 distributed generation projects were operating in Mexico as at the end of 2022. Of those, 334,735 (99.92 per cent) were solar powered. Only 249 projects (0.08 per cent) were powered by wind, biofuel, gas, hydroelectric and other sources.

It is common that residential users with distributed generation projects acquire solar panels from a contractor who provides operation and maintenance services and supports the user in administrative processes with the supplier. However, solar panels are also commonly leased to those residential users who are not interested in acquiring them.

There is a significant market for residential solar panels under the distributed generation scheme. This market is primarily boosted by the intention of residential users to decrease power bills, rather earning additional income from the sale of energy.

*Law stated - 12 July 2023*

### Regulation

Have any legislative or regulatory efforts been undertaken to promote the development of microgrids? What are the most significant legal obstacles to the development of microgrids?

There are no particular legislative or regulatory efforts to promote the development of microgrids. Even so, the Fund for Universal Electric Service plays a major role in the development of electrification projects for the supply of electricity to rural communities and urban marginalised communities.

*Law stated - 12 July 2023*

## Other considerations

What additional legal considerations are relevant for distributed generation?

The most important legal consideration is that distributed generation projects must have generation capacity of 0.5MW or less. Otherwise, they require a generation permit granted by the Energy Regulatory Commission and will be subject to the rules of the wholesale electricity market.

*Law stated - 12 July 2023*

## ENERGY STORAGE

### Framework

What storage technologies are used and what legal framework is generally applicable to them?

There are no significant energy storage projects in Mexico, since this activity is still being developed. Therefore, energy storage in the country is mostly performed as part of the operation of power plants considering the batteries as ancillary equipment of such facilities. However, according to a study published in 2020 by the National Institute for Ecology and Climate Change, energy storage will be important in Mexico in the short- and mid-terms in the context of the impact on the national electric system of growing intermittent generation, energy transition and distributed generation.

*Law stated - 12 July 2023*

### Development

Are there any significant hurdles to the development of energy storage projects?

Yes. One of the most significant hurdles is that the legal and regulatory frameworks do not properly regulate energy storage. Therefore, there are uncertainties about the requirements that energy storage developers must comply with from an energy-regulatory, social and environmental point of view. For operational purposes, the wholesale electricity market rules establish that energy storage facilities:

- must be registered in the electricity market as power plants; and
- are allowed to submit sale and purchase offers of the storage energy to the market.

*Law stated - 12 July 2023*

## FOREIGN INVESTMENT

### Ownership restrictions

May foreign investors invest in renewable energy projects? Are there restrictions on foreign ownership relevant to renewable energy projects?

Foreign investors are allowed to invest in renewable energy projects in Mexico and there are no restrictions on foreign ownership regarding renewable energy projects. Yet, the regulations establish certain rules applicable to foreign investment. For instance, permits for energy-related activities must only be granted to companies incorporated under

Mexican law. Thus, foreign companies commonly incorporate companies under Mexican law to participate in the energy sector.

*Law stated - 12 July 2023*

### **Equipment restrictions**

**What restrictions are in place with respect to the import of foreign manufactured equipment?**

Generally, there are no restrictions in place with respect to the import of foreign manufactured equipment such as solar panels, inverters, meters, wind turbines and so on.

*Law stated - 12 July 2023*

## **PROJECTS**

### **General government authorisation**

**What government authorisations must investors or owners obtain prior to constructing or directly or indirectly transferring or acquiring a renewable energy project?**

Regarding construction of renewable energy projects, strictly speaking, the regulation does not establish that an energy-regulatory governmental authorisation must be obtained prior to beginning construction. Nevertheless, other authorisations are required from environmental and local regulation points of view (eg, environmental impact authorisations, forestry land use change authorisation and construction licences). Therefore, developers commonly start the construction of their projects when they have obtained all major governmental authorisations required for power plants, such as environmental and social impact authorisations, generation permits and interconnection studies.

Regarding the acquisition of renewable energy projects, it is advisable to carry out a due diligence process to confirm that the project has obtained all government authorisations required by the federal, state and municipal regulations. In addition, further governmental authorisations could be required for the acquisition of a renewable energy project, such as authorisation from the Federal Antitrust Commission.

*Law stated - 12 July 2023*

### **Offtake arrangements**

**What type of offtake arrangements are available and typically used for utility-scale renewables projects?**

Renewable energy projects in Mexico are commonly structured as merchant projects or contracted projects.

Merchant projects sell all (or some of) the electricity, capacity and other ancillary services produced by the power plant to the wholesale electricity market, which is operated by the National Energy Control Center (CENACE). CENACE calculates the prices of these products according to the wholesale electricity market rules.

Contracted projects sell all (or some of) the electricity, capacity and Clean Energy Certificates produced by the power plant through the execution of electricity hedging agreements with offtakers that market non-suppliers, qualified suppliers and qualified users that directly participate in the wholesale electricity market. The parties can freely negotiate electricity-hedging agreements, including the obligation to have and maintain investment grade credit ratings and to provide performance guarantees, among others.

*Law stated - 12 July 2023*

## Procurement of offtaker agreements

How are long-term power purchase agreements procured by the offtakers in your jurisdiction? Are they the subject of feed-in tariffs, the subject of multi-project competitive tenders, or are they typically developed through the submission of unsolicited tenders?

Long-term power purchase agreements are commonly procured through unsolicited tenders. High-consumption energy users, qualified suppliers and generators commonly approach generators to identify business opportunities.

Regarding basic-service suppliers, the regulation establishes that they must execute power purchase agreements through public auctions called by CENACE. However, such public tenders are currently suspended by the federal administration.

*Law stated - 12 July 2023*

## Operational authorisation

What government authorisations are required to operate a renewable energy project and sell electricity from renewable energy projects?

In Mexico, all power plants with an installed capacity of 0.5MW or higher require a generation permit granted by the Energy Regulatory Commission. In addition, an interconnection agreement must be executed to allow the physical interconnection of the power plant to the transmission or distribution grid, as the case may be. Furthermore, the developer of the power plant and CENACE must execute a market participant agreement in the 'generator' modality, for the developer to be able to submit sale offers of the electricity produced to the electricity market and to execute electricity hedging agreements. Regarding the sale of Clean Energy Certificates, the clean generator must be registered in the CEL System operated by the Energy Regulatory Commission.

In addition to the foregoing, the developer must obtain environmental impact authorisation, social impact authorisation, change of land use authorisations and other federal, state and municipal authorisations as applicable depending on the characteristics of the project.

*Law stated - 12 July 2023*

## Decommissioning

Are there legal requirements for the decommissioning of renewable energy projects? Must these requirements be funded by a sinking fund or through other credit enhancements during the operational phase of a renewable energy project?

The regulation does not establish any particular decommissioning obligations for renewable energy projects. However, it is possible that the environmental authorisations of the project include obligations in that regard, depending on the characteristics of the project.

*Law stated - 12 July 2023*

## TRANSACTION STRUCTURES

### **Construction financing**

What are the primary structures for financing the construction of renewable energy projects in your jurisdiction?

The most common financing scheme used for the construction of power plants is project finance. In these schemes, part of the funding required for the design, construction, commissioning and operation of the renewable project plant is obtained from commercial and development banks. In project finance schemes, the loan agreement and the security documents (trust and pledge agreements) are key for the development of the project. In addition, new renewable generation projects are also financed with corporate funds.

*Law stated - 12 July 2023*

### **Operational financing**

What are the primary structures for financing operating renewable energy projects in your jurisdiction?

The most common financing scheme used for operating renewable power plants is project finance. In these schemes, part of the funding required for the operation of the power plant – or for financing the equity invested by the developer for the construction of the project – is obtained from commercial and development banks. In project finance schemes, the loan agreement and the security documents (trust and pledge agreements) are key for the development of the project. In addition, operating renewable energy projects are also financed with corporate funds.

*Law stated - 12 July 2023*

## **UPDATE AND TRENDS**

### **Recent developments**

Describe any market trends with respect to development, financing or operation in the renewables sector or other pertinent matters.

The renewables industry is facing uncertainty due to changes in the legal and regulatory framework, and decisions taken within the power sector, since President Andrés Manuel López Obrador assumed office in 2018. Subsequently, the development of new renewable generation projects has slowed down. However, the uncertainty in the renewables sector has also increased the interest of new investors in the acquisition of renewable power plants that may be subject of divestment processes.

*Law stated - 12 July 2023*




Describe any notable pending or anticipated legislative proposals.

There are no pending or anticipated legislative proposals regarding the renewables sector. However, the amendments to the Electricity Industry Act published on 9 March 2021 have not entered into force yet due to all the injunctions granted against them by federal courts. It is worth following up on the status of these injunctions, since the amendments to the Electricity Industry Act would substantially modify the electricity industry in Mexico.

*Law stated - 12 July 2023*



## Jurisdictions

	<b>Brazil</b>	Trench Rossi Watanabe
	<b>Canada</b>	McMillan LLP
	<b>Ecuador</b>	Tobar ZVS
	<b>Egypt</b>	Mazghouny & Co
	<b>Ghana</b>	Ferociter
	<b>Greece</b>	KMD Law Firm & Associates
	<b>India</b>	Khaitan & Co
	<b>Indonesia</b>	ABNR
	<b>Italy</b>	CMS Italy
	<b>Japan</b>	Nishimura & Asahi
	<b>Mexico</b>	White & Case
	<b>Netherlands</b>	Van Doorne
	<b>Nigeria</b>	Foundation Chambers
	<b>Portugal</b>	PLMJ
	<b>Tanzania</b>	Velma Law
	<b>Turkey</b>	Bozoğlu Izgi Attorney Partnership