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Update on the Anti-Corruption Landscape in Mexico

After an aggressive grassroots campaign, in mid-2016, the Mexican government signaled substantial progress in its fight against corruption when it adopted a new anti-corruption program. The new legislation promised increased transparency and accountability of public officials and energized the international community about Mexico's commitment to fight its long-standing corruption problems. Since enactment, however, progress towards implementing the provisions of the new law has slowed, leaving many questions about its future unanswered.

Anti-Corruption Regime in Mexico

Mexico's anti-corruption enforcement regime (the "National Anti-Corruption System") was approved by President Peña Nieto on July 18, 2016. The National Anti-Corruption System, which will come into effect on July 19, 2017, provides for severe sanctions against individuals and entities that are found to have engaged in bribery, collusion, and influence peddling, among other acts. For instance, individuals face sanctions of up to twice the amount of the acquired benefits, temporary ineligibility to participate in procurement, leases, services or state-owned projects, and compensatory and/or punitive damages. Legal entities face similar sanctions—up to twice the amount of the benefit—and could be deemed ineligible to participate in the aforementioned projects for up to 10 years. Entities could also be subject to suspension of activities, partnership dissolution, and compensatory and/or punitive damages. The National Anti-Corruption System offers partial defenses, such as the existence of a current compliance or integrity program that includes effective reporting and whistleblower protection tools. Entities may also receive credit for self-reporting misconduct and collaborating with government investigations.

Along with the promulgation of stringent sanctions, the National Anti-Corruption System also created the role of independent anti-corruption prosecutor—the first of its type in Mexico's history—to operate independently of the Mexican government. Importantly, National Anti-Corruption System is designed to enhance cooperation across federal, state, and municipal enforcement authorities and foreign authorities including the U.S. government.

Although the enforcement regime provides much needed transparency for a country riddled with corruption, we have yet to see the National Anti-Corruption System in action. Since its adoption nearly five months ago, there has been very little progress in establishing the framework needed to effectively implement the key provisions. In fact, the Mexican government has yet to even appoint the anti-corruption prosecutor. Recent developments could further exacerbate the period of stagnation.

Obstacles to Enforcement

In September 2016, President Peña Nieto's approval rating fell to an all-time low of 22% amidst reports that citizens were unhappy with his failure to fight crime, drug trafficking, corruption, and poverty. President Peña Nieto was harshly criticized for his decision to meet with Donald Trump in the summer of 2016 due to the threats Trump made towards Mexico throughout his campaign. Without the backing of his countrymen, President Peña Nieto may lack the necessary support in the legislature to roll out an effective National Anti-Corruption System next July.

Donald Trump's election could further complicate the potential effectiveness of the National Anti-Corruption System. As President-elect Trump's inauguration nears, the media continues to speculate about his immediate impact. For example, Mexico's economic outlook may turn squarely on the resolution of the North American Free Trade Agreement ("NAFTA"). Trump has publicly stated his intent to "tear up" or drastically alter the current version of NAFTA, which was signed in 1994 and permits free trade between Canada, Mexico, and the U.S. Due to

the fact that 80% of Mexican exports are purchased by the U.S., any change to NAFTA will impact Mexico's economy. Despite his many public statements about NAFTA, many believe that Trump is using the NAFTA threats to pressure Mexico into accepting tariffs on certain products to spur relocation within American borders of manufacturing facilities owned by American companies.

Practically speaking, a cooling-off period is likely to occur before any drastic measures are taken. The U.S. and Mexico share common interests in improving cross-border relations and promoting economic growth, which will require ingenuity and compromise. One step in the right direction is Mexico's enactment of the National Anti-Corruption System. The U.S. economy will certainly share in the benefits of a less corrupt infrastructure in Mexico. Nevertheless, it will require a significant amount of resources to enforce the stringent measures detailed above. Amidst the never-ending flow of speculation, the outlook for an effective anti-corruption regime in Mexico is uncertain.