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AMLO in Office: A New Dawn in Mexico's Fight Against Corruption?

Andrés Manuel López Obrador (“AMLO”), who ran on the promise to combat and eradicate corruption in Mexico, was elected the country’s president on July 1, 2018 with 53 percent of the vote and unprecedented support to implement his vision for the nation. In addition to AMLO’s victory, his party, MORENA, or the National Regeneration Movement, secured a majority of seats in the National Congress and the majority of the gubernatorial races up for election. All told, AMLO and MORENA laid claim to the broadest electoral mandate in Mexico’s recent history.¹

Attorneys

[Nicholas M. Berg](#)
[María González Calvet](#)
[Daniela Manrique Escobar](#)
[Natalia Mercado Violand](#)
[Mark de Barros](#)

Although AMLO largely ran on the promise to combat Mexico’s corruption epidemic, he faces an uphill battle. Since the entry into force of the Organization for Economic Cooperation and Development (“OECD”) Anti-Bribery Convention in February 1999, Mexico has yet to prosecute a case of foreign bribery. Likewise, its weak history of domestic bribery enforcement will be equally difficult to overcome, at least in the short term. For those reasons and others, significant questions remain for investors and companies operating in Mexico as to whether AMLO’s election will prove to be a “game changer” for Mexico’s anti-corruption enforcement.

Even before he was sworn into office on December 1, 2018, AMLO immediately took advantage of his broad electoral mandate by vigorously promoting his policy agenda, which is based on his vow to combat the power of the privileged political and social elite and large private corporations. For example, in October 2018, AMLO pledged to scrap an airport construction project that secured billions in funding and was partially built. Then, just days after his inauguration, AMLO launched a \$7.4 billion railway project connecting Cancún and Palenque, without conducting any feasibility studies. While experts doubt AMLO will reconcile its cost and that of many similar initiatives with his proposed austerity plan, there is little doubt that he has the will to attempt to implement an ambitious policy agenda.²

AMLO’s recent actions have, however, raised questions regarding his commitment to anti-corruption enforcement in Mexico, his campaign promises notwithstanding. For example:

National Anti-Corruption System (“NAS”). Mexico’s NAS still lacks a dedicated anti-corruption prosecutor and eight seats remain unfilled in its twenty-four-member regulating body.³ These vacancies, paired with AMLO’s surprise declaration that, under the NAS, acts of corruption committed during prior administrations would not be prosecuted, send an alarming message of impunity and may have a “chilling effect” on independent investigations and prosecutions.⁴ If

¹ Kevin Sieff, *López Obrador, Winner of Mexican Election, Given Broad Mandate*, THE WASHINGTON POST (July 2, 2018), available at https://www.washingtonpost.com/world/the_americas/lopez-obrador-a-leftist-wins-sweeping-mandate-in-mexican-presidential-election/2018/07/02/4c5e1de4-7be3-11e8-ac4e-421ef7165923_story.html?utm_term=.cbe983d60a77.

² *AMLO’s Mayan Train: Pros and Cons* (Aug. 29, 2018), available at <http://www.eluniversal.com.mx/english/amlos-mayan-train-the-pros-and-cons>.

³ Mexico’s creation of an autonomous corruption prosecution unit in 2016 marked a “substantial transformation” in Mexico’s anti-corruption infrastructure, according to OECD. Angel Gurría, *Mexico’s National Anti-corruption System- Statement from OECD Secretary Angel Gurría*, para 1, available at <http://www.oecd.org/mexico/mexico-national-anti-corruption-system-statement-from-oecd-secretary-general.htm>.

⁴ Though, AMLO promised that some investigations already underway would not be halted.

carried out, AMLO's declaration would result in severe backlash from anti-corruption bodies such as the OECD Working Group on Bribery.⁵

National Prosecutor's Office Future Enforcement. At the centerpiece of AMLO's agenda lies the establishment of an autonomous National Prosecutor's Office and Special Anti-Corruption Prosecutor's Office with the authority to investigate and prosecute corruption at the highest levels without outside influence and obstruction. However, the possible automatic transfers from the Attorney General's Office ("PGR") officials to the new National Prosecutor's Office raise questions of influence and lack of independence between agencies, which could negatively impact future enforcement efforts. A recent report on Mexico published by the OECD Working Group on Bribery found that the PRG's "Specialized Investigation Unit for Crimes committed by Public Officials and against the Administration of Justice is in dire need of more resources and support, including additional prosecutors,"⁶ noting also that overall resource levels had decreased since the Working Group's prior site visit held in 2011.

Odebrecht Investigation. The lack of progress of Mexico's investigation into potential corruption involving the state-owned oil and gas company, PEMEX, and construction conglomerate Odebrecht, has been a sore point in Mexico since 2016. In a multibillion dollar settlement, Odebrecht admitted to American, Swiss and Brazilian authorities in that year that it had paid \$10.5 million in bribes to Mexican officials (among others), turning over relevant information to authorities.⁷ The information related to Odebrecht's conduct in Mexico centered around Emilio Lozoya Austin, former President Enrique Peña Nieto's appointee as CEO of PEMEX.⁸ In October 2018, the National Institute of Transparency and Access to Information ("INAI") ordered the PGR to make the information on the Odebrecht case public. Mr. Lozoya filed a successful direct injunction against the INAI order. However, on January 5, 2019, AMLO stated that his administration will declassify the Odebrecht case information and that all reports be released to ensure transparency, as long as doing so does not violate due process in the investigation.⁹ The resolution of the Lozoya case will be viewed as a test for the AMLO administration, and the public's patience is running short, as of the ten Latin American states whose politicians have been accused of taking bribes from Odebrecht, Mexico remains one of the only countries that has yet to press charges.

AMLO & the Judiciary. MORENA's control over two branches of government opens the door for AMLO to exert control and attempt to influence the judiciary. Already, AMLO has alluded to legislation that would rotate judges around the country and impose "confidence tests."¹⁰ AMLO's majority in Congress allows him the power to appoint and confirm judges to the country's courts, including the Federal Court of Administrative Justice ("TFJA")¹¹ and Mexico's Supreme Court.¹² Under Mexico's General Law of Administrative Responsibility ("GLAR")¹³ a TFJA special chamber may

⁵ OECD Working Group on Bribery, *Implementing the OECD Anti-Bribery Convention – Phase 4 Report on Mexico* (2018), para. 82, available at <http://www.oecd.org/corruption/anti-bribery/OECD-Mexico-Phase-4-Report-ENG.pdf>.

⁶ OECD Working Group on Bribery, *Implementing the OECD Anti-Bribery Convention – Phase 4 Report on Mexico* (2018), para. 82, available at <http://www.oecd.org/corruption/anti-bribery/OECD-Mexico-Phase-4-Report-ENG.pdf>.

⁷ Azam Ahmed, *Mexico Could Press Bribery Charges. It Just Hasn't*, THE NEW YORK TIMES (June 11, 2018), available at <https://www.nytimes.com/2018/06/11/world/americas/mexico-odebrecht-investigation.html>.

⁸ Juan Montes, *Former Pemex CEO Emilio Lozoya Took Bribes, Ex-Odebrecht Officials Say*, THE WALL STREET JOURNAL (Aug. 14, 2017), available at <https://www.wsj.com/articles/former-pemex-ceo-emilio-lozoya-took-bribes-ex-odebrecht-officials-say-1502760808>.

⁹ Alberto Morales, *AMLO Quitara Reserva del Caso Odebrecht*, EL UNIVERSAL (Jan. 5, 2019), available at <https://www.eluniversal.com.mx/nacion/politica/amlo-quitara-reserva-del-caso-odebrecht>.

¹⁰ *Mexico's President, Judiciary in Standoff Over Pay*, The Associated Press (Dec. 10, 2018) available at <https://www.apnews.com/a203d558724b4fabbe16f9724a1625ea>.

¹¹ The TFJA is responsible for imposing administrative liability on public servants and private entities (companies and individuals) for serious violations of the GLAR – including corruption.

¹² López Obrador has the power to replace up to two justices on Mexico's Supreme Court.

¹³ Effective as of July 19, 2017.

oversee proceedings and impose administrative sanctions. However, the special chamber of the TFJA will only begin operating once a number of magistrates have been appointed by AMLO and subsequently confirmed by a majority vote in the Senate. While this trend continues, it is unlikely that companies in Mexico will be subject to robust enforcement under GLAR, for possible acts of corruption. Further, AMLO targeted the judiciary just after taking office, in large part through a proposed reduction in judicial salaries that was included in the budget he plans to submit to Congress. Many believe this piece of legislation is part of a greater attack on the independence of the judiciary.

While many have touted AMLO's election as the beginning of a new paradigm for Mexico's efforts to tackle the corruption epidemic, legitimate questions remain regarding AMLO's commitment to those efforts given his declaration of immunity, his actions against the judiciary, and the key vacancies remaining at the NAS, including its special anti-corruption prosecutorial position. Given AMLO's rhetoric and campaign promises, foreign investors and multinationals doing business in Mexico should track his administration's anti-corruption efforts closely in the months to come, as they could be potential targets for enforcement, particularly given AMLO's populist message and his recent declaration of domestic immunity.