

# MEXICO

## Little or no enforcement

2.0% of global exports

### Investigations and cases

In the period 2016-2019, Mexico opened three investigations, commenced no cases and concluded no cases.

There is little information publicly available about the investigations, other than that they concerned events that took place in Spain and Guatemala. One of the investigations is still ongoing.

In other jurisdictions, the construction company **CEMEX** has been under investigation by the US Department of Justice since 2016, for alleged irregularities reportedly committed by its employees in connection with the construction of a cement plant in Colombia.<sup>1</sup> Internal investigations uncovered payments of more than US\$20 million to a non-governmental third party in the process of acquiring lands, mining rights and the benefits of a tax-free zone.<sup>2</sup> There is no public information about whether an investigation has been initiated in Mexico in connection with CEMEX. In 2015, Spanish authorities initiated an investigation regarding alleged corruption and foreign bribery relating to **Grupo Mexico**, a mining company, but five years later, no known steps have been taken in Mexico.<sup>3</sup>

### Recent developments

Constitutional autonomy was granted to the Office of the Prosecutor General in December 2018,<sup>4</sup> meaning that its holder is entitled to a nine-year term and a dedicated budget. However, the nomination process for the last Prosecutor General was highly questioned. In October 2018, an Anti-Bribery Protocol for combatting foreign bribery was adopted by the Ministry of Public Administration and the Prosecutor General's Office to establish principles, performance standards and recommendations to guide the authorities responsible for combatting foreign bribery.<sup>5</sup> However, since the change of government in December 2018, there is no further public information about the implementation of the protocol.

A Special Anti-Corruption Prosecutor was appointed in March 2019, and during the year the office started 773 investigations into corruption. However, only five investigations were presented to a judge and the Prosecutor's Annual Report does not mention any investigation of foreign bribery.<sup>6</sup> Enforcement of anti-money laundering laws by the country's Financial Intelligence Unit has become more vigorous since 2019.

The new United States-Mexico-Canada Trade Agreement (USMCA), ratified in March 2020, includes – unlike its predecessor, the North American Free Trade Agreement – a chapter on preventing corruption, and holds some positive prospects for anti-corruption efforts.<sup>7</sup> The USMCA excludes facilitation payments under the criminal felonies included in the agreement, but recognises the negative effects of such practices. Facilitation payments can be punished if committed in Mexico or Canada, as the legal frameworks of these two countries consider the practice a crime. The United States must comply with the prescription included in

<sup>1</sup> <https://www.reuters.com/article/us-cemex-investigation/mexicos-cemex-says-under-u-s-doj-investigation-idUSKCN1GQ1WZ>

<sup>2</sup> <http://fcpa.stanford.edu/investigation.html?id=357>

<sup>3</sup> <https://www.elmundo.es/andalucia/2020/04/15/5e973ef421efa0955e8b460d.html>

<sup>4</sup> *Diario Oficial de la Federación, Decreto por el que se expide la Ley Orgánica de la Fiscalía General de la República*, 2018, [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5546647&fecha=14/12/2018](https://www.dof.gob.mx/nota_detalle.php?codigo=5546647&fecha=14/12/2018)

<sup>5</sup> Ministry of Public Administration, "Anti-Bribery Protocol", 2018, [https://funcionpublica.gob.mx/web/SNA/Protocolo\\_Anticohecho/Protocolo%20Anticohecho%20\(English\).pdf](https://funcionpublica.gob.mx/web/SNA/Protocolo_Anticohecho/Protocolo%20Anticohecho%20(English).pdf)

<sup>6</sup> *Gaceta de la Comisión Permanente, "Informe de actividades de la Fiscalía General de la República 2019, 2020*, [https://www.senado.gob.mx/64/gaceta\\_comision\\_permanente/documento/103402](https://www.senado.gob.mx/64/gaceta_comision_permanente/documento/103402); [http://gaceta.diputados.gob.mx/Gaceta/64/2020/ene/FGR\\_CC-20200122.pdf](http://gaceta.diputados.gob.mx/Gaceta/64/2020/ene/FGR_CC-20200122.pdf)

<sup>7</sup> <https://fcpcablog.com/2018/10/03/luis-danton-martinez-corres-usmca-heralds-new-era-of-anticor/>  
[https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/27\\_Anticorruption.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/27_Anticorruption.pdf)

the UMSCA to encourage enterprises to prohibit or discourage the use of such payments.

## Transparency of enforcement information

Information about foreign bribery enforcement efforts up to 2018 is available on the government Open Data Portal,<sup>8</sup> and more recent information can be found on the website of the Prosecutor General's Office.<sup>9</sup> However, this information is neither complete nor updated. It includes only the date, the file number, the origin of the file, the country in which the alleged offence took place, the file status and comments on the file. The most recent update was made in August 2019. The annual report presented by the Special Anti-Corruption Prosecutor in March 2020 did not provide a breakdown of investigations, including foreign bribery.<sup>10</sup> Neither the Ministry of Foreign Relations' website nor the government's open data portal contains any statistics on incoming and outgoing mutual legal assistance (MLA) requests. This is explained as being due to the fact that the requests for international legal assistance and their content are confidential. However, on request, the authorities can provide data and statistics on general aspects of international cooperation, such as the number of requests, countries from or to which they were sent, and the year.

The judiciary is required by law to publish resolutions and court decisions, and those decisions are available online.<sup>11</sup>

## Beneficial ownership transparency

There is no central register for beneficial ownership information. However, different registers are already in place and all relevant authorities have access to such registers on request.

As part of its Open Government Partnership National Action Plan, the Mexican government committed to move forward the Beneficial Ownership Register for the extractive industry in order to have a general register by 2023. Also, the Ministry of Public Affairs reported that in collaboration with the Financial Intelligence Unit of the Ministry of Finance and Public Credit, it led Mexico's adherence to the Beneficial Ownership Transparency Disclosure Principles originating from the United Kingdom.

The Financial Action Task Force has noted the difficulty for authorities to access beneficial ownership information: "A serious concern across all sectors is that beneficial owners are being identified only to a limited extent, systematically weighing on entities' effectiveness in assessing and managing money laundering and terrorist financing risks. Owing largely to shortcomings in the legal framework, FI's [Financial Institutions] seek to identify beneficial owners in only limited circumstances".<sup>12</sup>

## Inadequacies in legal framework

After the 2015 constitutional and secondary law reforms that created the National Anti-Corruption System and updated the criminal and administrative responsibilities for public and private stakeholders, the authorities in charge of the prosecution and sanctioning of corruption crimes, including foreign bribery, have not shown concrete results. They have argued that additional reforms are needed to create a more efficient legal framework.<sup>13</sup> However, the current legal framework is sufficient to initiate investigations and prosecute cases that could lead to sanctions. The Special Anti-Corruption Prosecutor has pointed out the need to reform several laws, stating an intent to obtain jurisdiction over a host of money laundering cases, to increase sanctions for companies involved in grand

<sup>8</sup> <https://datos.gob.mx/busca/dataset/cohecho-internacional-de-pgr>

<sup>9</sup> The information appears in general terms in order to comply with the reserve of the investigation established by the federal legislation on transparency and access to public information,

<https://transparencia.pgr.gob.mx/es/transparencia/DatosAbiertos>

<sup>10</sup> *Gaceta de la Comisión Permanente (2020), Informe de actividades de la Fiscalía General de la República 2019*, [https://www.senado.gob.mx/64/gaceta\\_comision\\_permanente/documento/103402](https://www.senado.gob.mx/64/gaceta_comision_permanente/documento/103402)

<sup>11</sup> <http://sise.cjf.gob.mx/consultasvp/default.aspx>

<sup>12</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Mexico-2018.pdf>

<sup>13</sup> <https://www.jornada.com.mx/2020/03/14/politica/008n1pol>; <https://www.eluniversal.com.mx/nacion/busca-fiscalia-anticorrupcion-cinco-reformas>

corruption cases, to develop the use of technology and enhanced surveillance in investigations, and to better define the standard for compliance required from companies.

## Inadequacies in enforcement system

Lack of resources, training and capacity-building efforts for prosecutors and judges hinders investigation and prosecution of foreign bribery and money laundering cases, which usually involve complex corporate structures and intricate financial flows. A deeper reform is also necessary of the appointment process for judges, in order to ensure they are chosen according to objective criteria in the interest of impartiality and professionalism. A proposal on this subject has been presented by the President of the Supreme Court.<sup>14</sup>

Mexico has signed multiple MLA treaties<sup>15</sup> and the General Law on Administrative Responsibilities determines that law enforcement authorities must cooperate with their foreign counterparts. According to the Prosecutor General's Office, from 1 January 2016 to 31 December 2019, 12 requests for legal assistance were submitted to Brazil regarding the Odebrecht case. However, there is no public information about this.<sup>16</sup> MLA treaties should show their relevance in concrete investigations, cases and sanctions in Mexico.

## Recommendations

- Publish and update statistics and other information on corruption and foreign bribery cases and investigations – including international cooperation – on the government's open-data portal and on the websites of the Prosecutor General's Office and the Ministry of Foreign Affairs
- Create a publicly accessible central register for beneficial ownership information
- Ensure the independence of the Prosecutor General's Office to prevent its selective or political use
- Develop a criminal prosecution policy regarding corruption control and the investigation and sanction of international bribery, with broad public discussion
- Increase efforts to recover stolen assets and promote

- reparation and a guarantee of non-repetition to the victims of corruption and international bribery
- Provide adequate resources and training for the investigation and prosecution of corruption and foreign bribery cases
- Reform the appointment process for judges in order to ensure their independence and impartiality
- Increase efforts to cooperate with other jurisdictions on investigations and cases of foreign bribery.

<sup>14</sup> Poder Judicial de la Federación (2020), *Reforma Judicial con y para el Poder Judicial*,

[https://www.scjn.gob.mx/sites/default/files/carrusel\\_transparencia/documento/2020-02/Reforma-Judicial-PJF.pdf](https://www.scjn.gob.mx/sites/default/files/carrusel_transparencia/documento/2020-02/Reforma-Judicial-PJF.pdf), p.3.

<sup>15</sup> [https://funcionpublica.gob.mx/web/SNA/Protocolo\\_Anticohecho/Protocolo%20Anticohecho%20\(English\).pdf](https://funcionpublica.gob.mx/web/SNA/Protocolo_Anticohecho/Protocolo%20Anticohecho%20(English).pdf), annex XIV.

<sup>16</sup> <https://www.jota.info/especiais/grand-corruption-new-data-and-documents-collated-for-the-first-time-give-a-thorough-look-into-the-activities-of-latin-american-governments-prosecutorial-agencies-for-the-odebrecht-case-29052019>