

GIR INSIGHT

AMERICAS INVESTIGATIONS REVIEW 2020



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Preface

Welcome to the *Americas Investigations Review 2020*, a *Global Investigations Review* special report. *Global Investigations Review* is the online home for all those who specialise in investigating and resolving suspected corporate wrongdoing, telling them all they need to know about everything that matters.

Throughout the year, the *GIR* editorial team delivers daily news, surveys and features; organises the liveliest events ('GIR Live'); and provides our readers with innovative tools and know-how products. In addition, assisted by external contributors, we curate a range of comprehensive regional reviews – online and in print – that go deeper into developments than our journalistic output is able.

The *Americas Investigations Review 2020*, which you are reading, is part of that series. It contains insight and thought leadership, from 34 pre-eminent practitioners from the region. Across 13 chapters, spanning around 160 pages, it provides an invaluable retrospective and primer. All contributors are vetted for their standing and knowledge before being invited to take part.

Together, these contributors capture and interpret the most substantial recent international investigations developments of the past year, with footnotes and relevant statistics. Other articles provide valuable background so that you can get up to speed quickly on the essentials of a particular topic. This edition covers Argentina, Brazil, Mexico and the United States, as well as multi-jurisdictional deals in Latin America; has overviews on data privacy, economic sanctions, extraterritoriality and privilege; covers how enforcements authorities interact and how to move forward after an investigation; and enforcer insight from the World Bank and the CGU.

If you have any suggestions for future editions, or want to take part in this annual project, we would love to hear from you.

Please write to insight@globalarbitrationreview.com.

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London

July 2019

Mexico: At a turning point in Anti-corruption Investigations and Enforcement

Luis Dantón Martínez Corres, Thomas S Heather,
Marta Loubet Mezquita and Juan José Paullada Eguirao
Ritch Mueller

Introduction

The coming years will be crucial for Mexico in the fight against corruption. Mexico has been steadily adopting constitutional and legal reforms since 2015 to implement an all-encompassing National Anti-corruption System (SNA), but the country has lagged in the past years with respect to its Latin American peers in the area of anti-corruption investigations and prosecutions, most notably with respect to Brazil, but also with respect to a growing number of countries that include Chile, Peru, Argentina and Colombia.¹

However, Mexico now has a complete revamped legal framework to investigate and prosecute corruption that will be put to the test in the coming years. It includes many key features that are compatible with international standard practices and institutions such as criminal and administrative liability of companies, the ability to enter into legal agreements akin to deferred prosecution agreements, plea bargains and structured settlements, and the appointment of independent prosecutors both at the state and federal levels.

It must also be noted that, given the degree of integration between the North American economies, Foreign Corrupt Practices Act (FCPA) cases are quite common, making Mexico the fifth country in the world most frequently implicated over the past 10 years in corporate FCPA enforcement actions.²

We believe that the following will open the window to a new era in anticorruption investigations and prosecutions in Mexico:

- the completion of the SNA;
- the establishment of a new government that has vowed to fight corruption;
- public sentiment that is overwhelmingly in favour of prosecuting past corruption; and
- international enforcement and cooperation.

1 Exporting Corruption, Progress Report 2018: Assessing Enforcement of the OECD Anti-Bribery Convention.

2 Matteson Ellis quoted on Outlook of the FCPA in Mexico in Latinex, 24 April 2019.

Mexico targets a high-profile case to begin enforcement

A year after the election – and six months into the current six-year presidential term – it appears that Mexico has finally turned a corner in anti-corruption enforcement by targeting a high profile case and one with profound political implications. It is a case with the potential of becoming an important and expansive case into alleged acts of corruption that may be attributed to the past administration.

It is difficult to predict whether this first case will be Mexico's 'Petrobras', but we can clearly state that it has the trappings of a potentially landmark case and that it may well signal the beginning of anti-corruption enforcement in Mexico, with significant investigations and prosecution cases, with long lasting consequences for companies doing business in Mexico.

On 27 May 2019, this high-profile case became public when arrests warrants were issued against the former CEO of Mexico's state-owned oil company Petróleos Mexicanos (PEMEX) and the chairman of Altos Hornos de México, SAB de CV (AHMSA), one of Mexico's largest integrated steel producers. The bank accounts of AHMSA, the CEO of PEMEX, and several of his relatives, were frozen at the request of the Financial Intelligence Unit of the Ministry of Finance and Public Credit (UIF). Also unprecedentedly, arrests warrants and Interpol red notices have been issued for the mother, sister and wife of the former CEO of PEMEX.

The chairman of AHMSA was swiftly arrested in Mallorca, Spain, and is awaiting extradition, while the CEO of PEMEX initiated his legal defence avoiding presentation through legal injunctions while in hiding and it has been reported that he is ready to provide information on other participants involved in corruption from the past administration. According to his defence lawyer, the former CEO of PEMEX will not go down alone should this case against him proceed. Furthermore, he has underlined that revelations may involve the former President of Mexico, Enrique Peña Nieto.

For now, the allegations of the Mexican authorities have only focused on US\$3.7 million transfers that allegedly passed through offshore accounts linked to Odebrecht, for reasons that will need to be clarified, and into accounts presumably controlled by the former CEO of PEMEX.³ It is alleged that such transfers took place contemporaneously to the purchase by PEMEX in 2014 of a fertiliser company sold by AHMSA at a significant overprice. These allegations were not new and had been brought to public light by investigative reporting news outlets in the past, but had not been investigated and prosecuted by the Mexican government during the past administration.⁴

3 Grangemouth Trading Company, offshore company created by Odebrecht to bribe political elites according to the confession to the Brazilian prosecutors by its incorporator Olívio Rodrigues; and Zecapan SA and Latin American Asia Capital Holding, the offshores reportedly used by Odebrecht to pay bribes to the former PEMEX CEO, as detailed by three Odebrecht executives to Brazilian justice authorities in <https://aristeguinoicias.com/2008/mexico/las-extranas-transferencias-millonarias-de-altos-hornos-de-mexico-a-odebrecht/>.

4 Idem.

Furthermore, a second fertiliser producing company was sold to PEMEX in 2015, also at an alleged significant overprice, and the transaction could reportedly be under investigation by the US Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) for securities and FCPA violations. Should US prosecutors get involved in this case, this fact may contribute to the investigation and enforcement of this matter in Mexico.

As the ripples of this case grow wider, more individuals and companies may be brought into the loop, significantly expanding this case, and could end up including the former President of Mexico, whose name has also been leaked as part of the presumed investigation mentioned in the previous paragraph.

The aftershocks of the aforementioned events have been unprecedented and this case and others will surely continue to make news and may set legal precedents that most likely will transform the practice of anti-corruption enforcement in Mexico with international repercussions.

Other potential cases and industries under prosecutorial review

From public interviews and statements of key officers of the current federal administration, it is expected that other cases will be analysed and could be brought forward soon, including actions related to Odebrecht.

Other industries that could be under review by Mexican prosecutors include entities that participated in public contracts (infrastructure and procurement of goods and services) or that received public concessions, as well as companies in the pharmaceutical industry, which have been under investigation for some time for antitrust charges and have been recently linked to corruption allegations, by President Andrés Manuel López Obrador himself.

This shifting of the gears in the enforcement of Mexican anti-corruption laws will likely contribute to greater awareness by companies of the need to self-investigate serious allegations and strengthen their compliance programmes.

Overview of the SNA

Among the laws and institutions that will be put to the test in the coming years is the SNA. To create the SNA the Federal Constitution was amended in 2015, federal laws were enacted in 2016 and entered into effect partially in 2017 and fully in 2019. The SNA consists of four new laws and reforms to five pre-existing laws, including one to the Federal Criminal Procedure Code, which provides criminal responsibility for corporations.

The SNA consists of seven core institutions grouped in a Coordinating Committee with an executive secretary, such institutions are:

- the specialised anti-corruption chief prosecutor;
- the Supreme Federal Auditing Authority;
- the National Institute of Access to Information;
- the Citizens Participation Committee;
- the Public Function Secretary together with its internal control units throughout the federal administration;
- the Judicial Council; and
- the Federal Administrative Court.

Among the key pending actions that are preventing the full implementation of the SNA are the following:

- the appointment of the magistrates of the new specialised Federal Administrative Court, that will hear serious administrative offence cases related to bribes, embezzling of public funds and other corrupt acts – the new administration has announced its intention to repeal this aspect of the original SNA;
- the completion of the adoption of the local anti-corruption systems by the 32 states that form Mexico's federal system; and
- the completion and strengthening of a 'national digital platform' that will technologically support the SNA's work.

The SNA expanded the scope of Mexico's existing anti-corruption laws and created a regime that encompasses the federal, state and municipal levels of government. This creates an inherent complexity that has slowed down its implementation significantly.

It is important to highlight that these reforms were widely supported and contributed to by civil society and its organisations at large.

The prolonged implementation of the SNA has caused fatigue, leaving the impression that matters were moving too slowly in Mexico, particularly compared with other Latin American peers that have made significant strides in the enforcement of their anti-corruption laws. Nevertheless, the current expectation is that this situation is rapidly changing.

Key institutional changes and appointment of lead prosecutors

Among the most significant legislative developments for the creation of the SNA, Congress enacted a new law in 2018 that created the Chief Prosecutor's Office (FGR), which replaced the former Attorney General Office (PGR). Beyond the institutional name change, this modification transformed the Office of the Attorney General into an autonomous prosecuting entity. The change is also significant given that both the country's first chief prosecutor and the first specialised anti-corruption chief prosecutor have been appointed in January and March 2019 respectively for a term of nine years in office, a previously unseen tenure for prosecutors.

The amendments to the Federal Criminal Code grouped under section named 'Crimes Arising from Corrupt Situations' entered into effect upon the appointment of the new specialised anti-corruption chief prosecutor. Such amendments include bribery, intimidation, abusive exercise of authority, influence peddling, embezzlement of public funds and illicit enrichment.

Offences in the General Law of Administrative Responsibilities

Prohibited conduct under the Mexican anti-corruption laws includes:

- the bribery of a public official (directly or through third parties);
- the participation in any federal, state or municipal administrative proceedings from which the person has been banned for past misconduct;
- the use of economic or political power (be it actual or apparent) on any public servant to obtain a benefit or advantage, or to cause injury to any other person or public official;

- the use of false information to obtain approval, benefit or advantage, or to cause damage to another person or public servant;
- the misuse and misappropriation of public resources, including material, human and financial resources;
- the hiring of public officials who were in office the prior year, acquired confidential information through their prior employment, and gave the contractor a benefit in the market and an advantage against competitors; and
- collusion with one or more private parties in connection with obtaining improper benefits or advantage in federal, state or municipal public contracting processes.

The General Law of Administrative Responsibilities (GLAR) provisions apply extraterritorially and sanction illicit acts in international commercial transactions abroad. The prohibitions in the GLAR are rather broad and there is no facilitating payments exception.

Criminal liability of companies

With the reform in 2016 to the National Criminal Procedural Code, criminal liability of companies was formally adopted. Article 421 of the code provides that companies will be criminally liable for felonies committed in their name, representation, benefit or through their own instrumentalities, when it is determined that there was failure to comply with their required internal controls to prevent such conduct, without prejudice of the criminal liability that may attach personally to the representatives and managers of a company.

Likewise, the Criminal Code for Mexico City provides the basis for the criminal liability of companies. It sets forth that companies will be held criminally liable when their legal representatives or managers commit crimes for failing to exercise over them the proper control, according to the characteristics and circumstances applicable to its organisation or charter, specific characteristics and circumstances and that the illicit conduct was intended to benefit the company.

Thus, criminal compliance requirements were incorporated into the Mexican legal system. Criminal conduct may only be attached to the company when there exists a failure to implement appropriate controls; that is, compliance programmes.

The consequences of criminal liability against entities or individuals as may be determined by a court may include fines, disgorgement of assets and publication of the judgment and, in extreme cases, the dissolution of legal entities.

Such penalties can be mitigated if, before the commission of the felony, companies have an entity responsible for verifying internal controls and compliance with applicable legal provisions to monitor adherence to internal policies. Courts are mandated to consider in the sentencing several elements, which include the magnitude of the breach in the internal controls of the organisation among other key factors.

Administrative liability of companies

Companies are also subject under the GLAR to administrative liabilities for serious law violations. The GLAR sits at the core of the SNA and encompasses all three levels of government (federal, state and municipal), and most prominently:

- targets corrupt activities by corporate entities and provides incentives to implement compliance programmes and corporate integrity programmes, per Mexican law;
- establishes administrative penalties for improper payments to government officials, bid-rigging in public procurement processes, the use of undue influence and other corrupt acts;
- applies to private persons (companies and individuals) who commit acts considered to be linked to what it defines as ‘serious administrative offences,’ such as bribery, influence-peddling, improper hiring of former public officials and collusion; and
- provides that private companies can be held liable for such conduct when individuals act on the company’s behalf and attempt to obtain benefits for the company through the wrongdoing.

The GLAR provides self-reporting and reduction of penalties – up to a 50 to 70 per cent reductions for those who report past or ongoing misconduct to an investigative authority.

In the case of non-monetary sanctions, such as prohibition from participating in public procurement (eight years for individuals and 10 for corporations), if a person subject to such sanctions self-reports violations, the sanction can be reduced or lifted in its entirety by the Mexican authorities.

Requirements for reduction of penalties are the following:

- involvement in alleged violations and being the first to contribute information that proves the existence of misconduct and submitting information as to who may have committed the violations;
- refraining from notifying other suspects that an administrative responsibility action has been initiated;
- full and ongoing cooperation with the investigative authorities; and
- suspension of any further participation in the alleged infraction.

Other participants who may at a later date disclose information could be eligible to receive 50 per cent penalty reductions. Also participants that confess information after an administrative action has begun could potentially receive a 30 per cent reduction in penalties.

Compliance programmes or integrity programme requirements under the GLAR

Compliance programmes under the GLAR must meet the following requirements, which are generally in line with the hallmarks for compliance programmes under the DOJ guidance:

- an organisation and procedures manual that clearly delineates the functions and responsibilities of each business area and clearly defines the leadership structure and reporting chains;
- a code of conduct that is publicised and promoted to reach all members of the organisation and specifically includes effective mechanisms and systems of control;
- adequate and effective control, compliance and audit systems that provide constant and periodic review of integrity standards within the entire organisation;
- adequate self-reporting systems, both internally and outside the company, that delineate the company’s disciplinary procedures and concrete consequences for violations;

- adequate systems and programmes for training in regards to integrity programmes;
- human resources policies to screen individuals during hiring who could represent a risk to the integrity of the company; and
- mechanisms that ensure transparency regarding the company's interests.

It is clear that, in the future, Mexico will expand and clarify the accepted standards for evaluating the effectiveness of compliance programmes. Educating the judiciary and prosecutors in this area will be key to the future and initial success of the SNA.

The administrative and criminal procedures

The GLAR provides an administrative procedure for serious administrative liabilities to be processed by the Federal Administrative Justice Court. The original design of the SNA provides for the appointment of special anti-corruption magistrates who would form specialised courts within the Federal Administrative Justice Court, which to date have not been appointed as a result of political differences. Since the election, the administration of President López Obrador and key members of the legislative branch have hinted at plans to scrap such specialised courts. It is not clear yet how they could be replaced, but it is our opinion that this could be a setback for the development of the SNA. Specialised courts have proven to be quite effective in enforcement, particularly of Mexican antitrust laws. They typically speed up the advancement of judicial precedents and provide greater certainty in the application of the law due to their technical specialisation. In the meantime, the Federal Administrative Justice Court is hearing cases on serious administrative liabilities.

Both federal and state criminal courts can hear criminal cases depending on whether the specific facts grant them jurisdiction.

Professional secret

A key issue in investigations is the extent of legal protection to access private information that could be confidential or privileged. In Mexico, the legal concept of professional secret is similar to the US concept of attorney–client privilege.

Professional secret refers both to the obligation of the professional to keep absolute secret to matters trusted by clients and to the right to confidentiality of communications between client and lawyer as a safeguard to the constitutional right to intimacy and protection of private communications as provided by the Constitution and criminal laws.

Even though certain judicial precedents have explored the scope and validity of the concept of professional secret, no clear general rules exist in respect of its application or boundaries in criminal or administrative judicial procedures.

Mexico's antitrust authority, the Federal Economic Competition Commission (COFECE), has provided, through the exercise of its broad investigative powers, the opportunity to explore the application and boundaries of the concept of professional secret. Following a ruling by the antitrust specialised courts in November 2018 that established the corrupting effect of privileged information used by COFECE to build a case, COFECE issued Draft Guidelines for the Handling of Privileged Information. The guidelines were subject to a public review that ended

in January 2019 and are still in process. When these guidelines become public, it is expected that there will come about a positive regulatory first effort at profiling the reach and limits of access to private information that may be subject to protection, yet courts will have the final word on this matter.

Based on the uncertain current state of affairs in this area of law, the adoption of certain communication protocols between attorneys and their clients are strongly recommended – at least until legislation or Supreme Court decisions on this issue clarify the scope and boundaries of professional secret – to determine:

- identification of protected documents under confidentiality;
- covered persons;
- means of communication; and
- parties that may share the privileged and confidential information between attorneys and clients.

Anti-money laundering enforcement

A central topic to the investigation and prosecution of corruption is the criminal offence of money laundering. As we have already seen in the first major case targeted by Mexico's prosecutor, the UIF is poised to play a central role in the upcoming enforcement of our anti-corruption laws, conducting more investigations and initiating cases in coordination with the FGR whenever there is a violation of law. This is a departure from the previous role that the UIF had played in the past and one that may require legal reforms to provide the right legal framework for this revamped central role.

The proactive head of the UIF is already advocating for such legal reforms, which would include having a permanent seat as member of the SNA's executive committee for both the UIF and the tax authority (SAT), and greater autonomy and resources to conduct investigations and initiate prosecutions with the FGR.

According to the most recent Anti-money Laundering and Antiterrorist Financing Mexico Report issued in January of 2018 by the intergovernmental Financial Action Task Force and its Latin America affiliate (GAFILAT), Mexico has an adequate system to tackle money laundering and terrorist financing, but should step up efforts in pursuing launderers and confiscating their assets.⁵ Based on the new enforcement policy, the findings of such report may well become mute. It is expected that the UIF will spearhead investigations and prosecution of cases in an unprecedented fashion.

Coordination between participants in the SNA

A key issue in the investigations and prosecutions that will take place will be to achieve the necessary coordination between the federal and state entities that conform the SNA. The institutional instruments exist to meet this goal but it will not be achieved without some growing

5 Mexico – Financial Action Task Force Mutual Evaluation Report on Anti-Money laundering and counter-terrorist financing measures, January 2018.

pains. The federal agencies seem to be having problems with cooperation and coordination, for example among the FGR and the UIF. This issue must be addressed for purposes of the effectiveness of investigations and prosecutions.

Whistleblower protection

Mexico has not developed a legal framework for the protection of whistleblowers other than the legal protections that exist in the realm of the public sector for public servants escalating information to the Ministry of Public Service.

Whistleblower protections in general will be an area that will require either judicial or legislative development in order to facilitate informants to take the risk of testifying about wrongdoings without incurring unnecessary additional risks that deter this vital information source.

Deferred prosecution agreements, plea bargains and structured settlements

Deferred prosecution agreements (DPAs), plea bargains and structured settlements are grouped in this section, given their relative novelty in Mexico and lack of practical development, and because the three could be based on two Mexican procedural criminal law concepts called *criterio de oportunidad* (opportunity criteria) and *acuerdo reparatorio* (reparatory agreements). Opportunity criteria would be akin to prosecutorial discretion in common law countries, while an reparatory agreements would be similar to a structured settlement between the victim of a crime and the offender.

Article 256 of the National Code of Criminal Procedure, gives prosecutors legal basis to abstain from prosecuting based on the opportunity criterion, when:

- the penalty established for the crime does not exceed five years of prison and the crime was not violent;
- crimes of property committed without violence or negligent offences;
- the defendant has suffered serious damage as a consequence of the crime;
- the penalty would be irrelevant considering another judgment that has previously been sentenced or could be sentenced, when the defendant delivers essential and useful information to the prosecution regarding another more serious crime – or the same crime if the accused had a lesser degree of participation – and agrees to testify; and
- if criminal prosecution would be disproportionate or unreasonable considering the causes or circumstances surrounding the commission of a crime.

Prosecutors have wide discretion in the application of the opportunity criterion but there are some guidelines for federal prosecutors in this area.

The concept of a plea bargain as an agreement between the prosecutor and defendant whereby the defendant agrees to plead guilty to a particular charge in return for some concession from the prosecutor does not exist in Mexico, but based on the application of the opportunity criterion – article 256 (V) – in cases where the defendant provides essential and useful information to the prosecution, with respect to another more serious crime, and agrees to formally testify in another trial there would be a basis for a deal between prosecutors and defendant.

A DPA is a non-prosecution agreement in which a prosecutor agrees to grant amnesty in exchange for the defendant to fulfil certain requirements. Under Mexican law it would be based on the opportunity criterion and the National Code of Criminal Procedure – articles 191 to 200 – whereby the prosecutor requests a suspension of the procedure on the condition that defendant provides a reparation plan and complies with certain requirements.

As for reparatory agreements, article 186 of the National Code of Criminal Procedure provides that victims may enter into restitution agreements with their offenders, which if duly complied, would terminate the criminal proceeding.

A reparatory agreement may only be reached in cases where a victim's formal complaint is required to initiate a criminal investigation, in cases of criminal negligence, and in non-violent white-collar crimes; and only if the offender has not previously breached a reparatory agreement, unless he or she was later found innocent of the alleged crime.

To avoid initiating a criminal procedure in cases where a reparatory agreement could be reached, article 189 of the National Code of Criminal Procedure establishes that either the district attorney or the judge may encourage the victim to reach a reparatory agreement with the offender.

In case the victim and offender reach a reparatory agreement, it should be presented to a judge for his or her approval. If approved, the criminal proceeding would come to an end and the alleged offence could not be prosecuted in the future, unless the alleged offender breached the terms of the reparatory agreement.

It is important to mention that such reparatory agreements have already been reached between the former PGR and the alleged offenders in high-profile criminal corruption proceedings in Mexico involving a case of corruption of a former governor of a state in Mexico, setting an important precedent for the FGRs to reach such agreements whenever possible in the future.

Asset forfeiture in corruption cases

Legislative changes in Mexico continue to expand the tools prosecutors have to fight corruption and to effectively recover illicitly acquired assets, particularly from corrupt activities. Prior laws permitted the forfeiture of property following the spirit of the Palermo and Merida United Nations Conventions Against Transnational Organized Crime (2000) and Against Corruption (2004).

Mexico has now expanded the conduct that could trigger asset forfeiture – organised crime, drug and human trafficking, kidnapping and illicit enrichment – to include corruption, both by public servants as private persons or corporate entities.

This reform also provides for two separate legal courses of action for asset forfeiture, civil and criminal, that can each run independently and have separate legal consequences. The civil procedure in the amended legislation is designed to lead swiftly to the forfeiture of property if the defendant fails to prove that assets were acquired legally.

Further, a criminal conviction is not a prerequisite for the civil procedure to determine property forfeiture. And the civil procedure reverts the burden of proof to the defendant, not the prosecutor, to demonstrate that the assets subject to forfeiture were acquired legally beyond reasonable doubt.

The goods over which authorities may enforce these property forfeiture rules include all tangible and intangible assets that are eligible to be private property of any individual or company.

Importantly, there is no statute of limitations in the new forfeiture laws for individuals or companies. Further, asset forfeiture could be applied retroactively to the moment when the illicit or corrupt acts were carried out. Retroactive application of the new law will likely face legal challenges but that is beyond the scope of this article.

Practitioners will want to keep in mind, in connection with anti-corruption investigations and enforcement actions in Mexico, that forfeiture is now a remedy the government can wield.

Institutional development and international cooperation

The development of institutional capabilities is perhaps Mexico's greatest challenge for the enforcement of anti-corruption laws. The federal chief prosecutor of Mexico himself has admitted in press interviews that the institution needs to be seriously upgraded and reformed to meet the current challenges of law enforcement in Mexico. There is optimism that, despite the austerity initiatives of this administration, the necessary resources will be allocated to this vital area of government.

Mexico should also benefit from international cooperation in this area as peers around the world undoubtedly want the country to succeed. Particularly, the assistance of the DOJ will prove crucial for Mexico to speed its learning curve as well as of its Latin American peers.

Major investigations in the past, such as the recently settled investigation between Walmart and the DOJ, have been led by the DOJ, with almost none participation of its Mexico counterparts. Mexico's newly minted prosecutors are now ready to cooperate jointly in investigations and to lead the way. This will be a new development that will transform the practice of investigations in Mexico.

Under the revised US, Mexico and Canada Trade Agreement (USMCA), which now notably includes in its Chapter 27 a common framework to address anti-corruption efforts, the parties to USMCA recognise the importance of cooperation, coordination and exchange of information among their respective anti-corruption law enforcement agencies to foster effective measures to prevent, detect and deter bribery and corruption.

We are about to see an unprecedented era in which the anti-corruption law enforcement agencies of the three countries undertake technical cooperation activities, including training programmes to an extent not seen before in the region. This will be very significant for Mexico, which needs to bolster greatly its institutional capabilities for investigating and prosecuting corruption activities.⁶

6 Luis Dantón Martínez, 'USMCA heralds new era of anticorruption and compliance', FCPA Blog, 3 October 2018.

Conclusion: a positive outlook ahead for investigations and anticorruption enforcement in Mexico

Whether 2019 will be for Mexico what 2013 was for Brazil remains to be seen, but based on the foregoing we can conclude a number of positive conclusions.

Investigative practice will continue to pick up pace significantly as a result of the changes detailed in this article. As compliance programmes continue to expand in Mexico, the practice of conducting professional investigations into serious allegations is being increasingly adopted by companies.

Also, as a result of the expected increased enforcement and prosecution of companies, it is becoming more common for companies in Mexico to perform higher stake investigations with the help of experienced law firms and forensic experts to obtain vital information for their decision-making process and to be able to determine sensitive issues such as defence strategies or cooperation with the authorities.

We are of the opinion that large-scale investigations with international cooperation components will take place sooner than expected given the degree of economic integration between the US and Mexico, creating the need for local counsel to be able to work effectively with their foreign counterparts in complex issues with multi-jurisdictional implications.

Mexico's prosecuting authorities will continue to quickly build institutional capabilities and increase coordination among them, particularly between the federal and state levels. The FGR and the DOJ will begin to work more closely than ever to investigate, prosecute and settle cases together in line with global trends in this area. The flexing of the prosecution muscle will surely lead to increased investigations and enforcement of our anticorruption laws, both at the federal and state levels.

The UIF will play a key role in expanding the reach and depth of AML investigations, which will in turn be key in building anti-corruption cases. Legal initiatives to provide greater powers to the UIF should also be forthcoming. For example, the SAT and UIF should become permanent members of the Coordinating Committee of the SNA and the UIF will likely get the freedom and resources to perform its expanded role.

The current federal government political coalition majorities in the legislative will facilitate the approval of legislative initiatives that will continue to perfect and complete the SNA. Such legislative changes are expected to align the SNA with the strategies and priorities of this administration.

The past few years have yielded abundant cases pending prosecutorial review which will surely begin to be investigated and tried under the SNA. Companies will be more motivated than ever to improve the effectiveness of their compliance programmes in anticipation of a stricter enforcement environment and Mexico will see a rise in investigative work.

We are confident about the efforts of Mexico to strengthen its rule of law and institutions to fight corruption. All in all, it is evident that Mexico has joined the global wave of investigations and enforcement in a way that will surely make headlines in the years to come.



Luis Dantón Martínez
Ritch Mueller

Luis Dantón Martínez is the leader of the compliance, anti-corruption and investigations practice at Ritch Mueller. He has significant local and international experience and is admitted to the practice of law both in Mexico and in New York. He advises multinational and local companies on major investigations, anti-corruption and compliance issues that usually involve various legal jurisdictions, working closely with top international law firms. His work covers both the preventive aspects, such as helping clients to assess, develop and improve their compliance programmes, as well as the crisis response aspects, including high-stakes investigations and the representation of clients before enforcement agencies and courts.



Thomas S Heather
Ritch Mueller

Thomas S Heather has significant experience and recognition as a leading lawyer in Mexico and Latin America. He has lectured internationally at leading Mexican and US universities, has published more than one hundred articles and has co-authored several treatises. He has significant experience in high-stakes investigations and complex matters. He is a founding member of the International Insolvency Institute, past chairman and co-founder of the Mexican Mediation Institute and of the Financial Law Committee of the Mexican Bar Association and is a member of the Arbitration Academy of Mexico and of the Best Practices and Governance Committee of the Mexican Business Council. He was recently inducted into the American College of Bankruptcy as a fellow.



Marta Loubet
Ritch Mueller

Marta Loubet has diverse and significant professional experience in the area of competition and antitrust, regularly assisting national and multinational companies in matters of merger control, investigations on abuse of dominance and cartels and the development and implementation of compliance programmes. She is also a member of compliance, anti-corruption and investigations practice of Ritch Mueller, focusing her efforts on major investigations. Her expertise covers several industries, such as energy, transportation, financial services, fast-moving consumer goods and technology, media and telecoms. Prior to joining the firm, Marta was part of the competition teams in Mexico City, Brussels and Paris of leading firms in the sector for more than six years, after having served as a stagiaire in the DG Comp of the European Commission and the French Council of State. Marta is admitted to practise in Madrid (and admissible in Brussels – List E) since 2011 and was admitted to practise in Mexico in 2017.



Juan José Paullada
Ritch Mueller

Juan Jose Paullada has significant experience advising multinationals from the energy, real estate, private equity, banking and financial sectors in tax matters and complex litigation. He is experienced in administrative litigation before the Federal Administrative Justice Court, circuit courts and the Supreme Court of Justice and also in criminal matters and provides support to the compliance, anti-corruption and investigations practice of Ritch Mueller.

RITCH MUELLER

Ritch Mueller represents and provides sophisticated high value added and specialised legal and tax advice to domestic and international clients with respect to their business transactions in Mexico. We work hand in hand with our clients in structuring and implementing solutions that meet each of their needs. Our measure of success is our clients' satisfaction and ability to achieve their objectives. Building prosperous and long-standing relationships with the best interests of our clients in mind is at the heart of what we do.

Our legal and tax team combines seasoned and young legal practitioners and professionals creating one of the most talented teams of legal professionals in Mexico. We privilege teamwork and efficiency and guide our practice based on the ethics passed down from the firm's founder, the late James E Ritch. We constantly seek to add new talented and dedicated professionals to our staff so as to allow us to serve a market that continues to evolve, both in dimension and complexity. The result is a partnership with unique diversity and experience, and a history of proven innovation.

Our achievements have distinguished our firm and have become a model for the modern practice of law in Mexico.

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The *Americas Investigations Review 2020* contains insight and thought leadership from 34 pre-eminent practitioners from the region. Across 13 chapters, spanning around 160 pages, it provides an invaluable retrospective and primer.

Together, these contributors capture and interpret the most substantial recent international investigations developments of the past year, with footnotes and relevant statistics. Other articles provide valuable background so that you can get up to speed quickly on the essentials of a particular topic. This edition covers Argentina, Brazil, Mexico and the United States, as well as multi-jurisdictional deals in Latin America; has overviews on data privacy, economic sanctions, extraterritoriality and privilege; covers how enforcements authorities interact and how to move forward after an investigation; and enforcer insight from the World Bank and the CGU.