



As Mexico works towards implementing its new [National Anti-Corruption System](#), the [largest foreign bribery case in history](#), arising out of Brazil, serves to highlight historic weaknesses in Mexican anti-corruption efforts and just how necessary the National Anti-Corruption System will be to help combat corruption in Mexico.

The Odebrecht and Braskem Plea Agreement In December 2016, Brazilian construction conglomerate Odebrecht S.A. ("Odebrecht") (along with Brazilian petrochemical company, Braskem S.A. ("Braskem")) [pleaded guilty](#) to making hundreds of millions of dollars in corrupt payments to government officials in order to secure business, preferential tax treatment, and other commercial benefits. The companies agreed to pay a combined total penalty of \$3.5 billion to resolve charges with authorities in the United States, Brazil, and Switzerland, but admitted that their conduct spanned numerous countries throughout Latin America and the world, including Angola,

Argentina, Brazil, Colombia, the Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru, and Venezuela. With respect to Mexico, Odebrecht admitted to paying approximately \$10.5 million in bribes to Mexican government officials in exchange for public works contracts between 2010 and 2014, and realizing over \$39 million in benefits as a result. According to public records, all of Odebrecht's public works projects in Mexico during that time were commissioned by state-owned oil company Petróleos Mexicanos ("Pemex"). *Past Red Flags* Red flags emerged with respect to Pemex's relationship with Odebrecht long before the December 2016 plea agreement. According to think tank Mexicans Against Corruption and Impunity, the Mexican Auditoría Superior de la Federación ("Federal Superior Audit Office" or "ASF"), charged with monitoring the use of public funds, [noted anomalies](#) in contracts Pemex granted to Odebrecht throughout the time Odebrecht admitted to paying bribes. Such anomalies included: unexplained or undocumented cost overages (in one case more than \$400 million), payments in spite of contract non-performance or non-compliance, contracts awarded without tender submissions, and other improper payments. Notwithstanding the fact that the ASF brought some of these anomalies to Pemex's attention, and the Secretaría de la Función Pública ("Ministry of Public Administration" or "SFP") held hearings on at least nineteen cost overages, Mexican authorities never opened a formal investigation. Nor were any charges ever brought against Pemex, Odebrecht, or any related individuals. *The Investigation* In mid-February, after the Odebrecht plea agreement was announced, Brazil's Federal Public Prosecutor's Office gathered the attorneys general from Mexico, eight other Latin American countries, and Portugal in Brasilia to execute an agreement to further investigate and penalize Odebrecht under the laws in each of their respective countries. While investigations in Colombia, Ecuador, Venezuela, and Peru have already resulted in charges and arrests, progress in the Mexican investigation has been slow. Pemex announced soon after the Brasilia meeting that it would begin an internal investigation (to be conducted by Pemex's Responsibilities Unit, established as a sub-branch of the SFP as part of Mexico's 2015 energy sector overhaul), and the SFP filed a complaint with the Attorney General "against whoever is responsible." Yet, it was not until early April that Mexican prosecutors first requested testimony from Pemex officials and contracts between Pemex and Odebrecht. To date, no charges against any specific former or current Pemex official have been filed, nor has any penalty for the conduct been imposed upon Odebrecht in Mexico. *Looking Ahead* Historically, one (though not the only) reason for enforcement inaction was likely the ASF's limited authority to investigate and remediate the "audit exceptions" it observed. Under the new National Anti-Corruption System, however, the ASF will be empowered not only to investigate irregularities it detects, but also to demand that public officials and individuals involved in those irregularities be penalized. Accordingly, moving forward, the ASF should have the opportunity to function more effectively as a gatekeeper, by refusing to allow known misuse of public funds to fall by the wayside. Inaction in the face of red flags may also be attributed to historically blurred lines between government-owned businesses and government regulators in Mexico. Now, with the SFP being charged with coordinating government control programs under the National Anti-Corruption System, private citizens and political appointees alike should face greater accountability. Finally, the new National Anti-Corruption system provides for an independent anti-corruption prosecutor, which should reduce the insulation from investigation and prosecution that government officials in Mexico have historically enjoyed. Of course, only time will tell whether the revised anti-corruption enforcement structure will result in more aggressive action and enforcement, but many will be watching.

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