Mexico passes "crazy" transparency law

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A last-minute amendment to Mexican anti-corruption legislation that will place onerous disclosure obligations on all government contractors is both impractical and amounts to an invasion of employee privacy, lawyers say.

On 17 June, Mexico's lower house of congress passed legislation that will require public servants and government contractors to publicly disclose their tax returns, their assets and any private economic interests.

The legislation was passed despite last-minute changes that were inserted and voted through by the upper house of congress. The amendments extended the legislation, which originally focused on disclosure obligations for public officials, to the private sector, requiring companies and individuals doing business with the government to declare their tax and financial information.

What's more, the revised law also provides a disclosure exemption. Both private and public sector parties will be exempted if they can show that public disclosure would infringe upon their privacy rights.

President Peña Nieto has 30 days to veto the revised legislation, and send it back to congress. However, the possibility of a veto is slim as the president's own political group, the Institutional Revolutionary Party, voted the bill through congress.

The changes were met with powerful opposition from sections of the Mexican public. On 16 June, hundreds of suited men and women, representing Coparmex, a Mexican employers' association, protested in the country's capital over the bill's extension of the law to the private sector.

Civil society groups criticised the disclosure exemption, with the head of anti-corruption NGO Transparency International reportedly saying the last-minute amendment had left a "bitter taste".

The legislation – known as the "3-out-of-3" bill, in reference to the three types of financial information it would require public officials to disclose – had, until last week's amendments, been widely supported by the Mexican public. A petition supporting disclosure obligations for public officials accumulated hundreds of thousands of signatures, and the measure was also supported by influential business groups, such as Coparmex.

Juan Francisco Torres-Landa at Hogan Lovells BSTL says extending the legislation to cover government contractors is "simply an act of revenge" for the private sector's support for the 3-out-of-3 bill.

Torres-Landa adds that the legislation is particularly invasive for private sector employees. He says public officials are only able to hold a very limited number of jobs outside of their government employment – such as university professorships – while private company employees are more likely to have multiple external sources of income and many different economic interests.

This means the 3-out-of-3 bill will amount to a greater invasion of privacy for private sector employees, who will have to produce wide-ranging and detailed information about their lives, says Torres-Landa.

Lawyers say that constitutional challenges to the legislation, brought by employees concerned about their privacy rights, are likely. Adrián Magallanes at Von Wobeser y Sierra SC in Mexico City says that a number of companies and individuals are "thoroughly analysing" whether to bring challenges of this kind.

Roberto Hernández at law firm Corporación Mexicana de Asesores en Derecho in Mexico City calls the revised legislation "absolutely crazy".

"The government will have to look at the financial status of all of the employees of the company contracting with the state," he says. "That's potentially thousands of employees. It's just not practical for the government to collect all of that information let alone analyse it."

Lawyers are confused about how exactly the legislation would apply in practice to government contractors. Some say it is likely that disclosure obligations will only apply to the owners, shareholders, partners and directors of government contractors, while others think all employees of Mexican companies and subsidiaries doing business with the state would be required to make financial information publicly available.

The revised 3-out-of-3 bill was voted through along with a raft of other anti-corruption measures, including the introduction of an 18-year maximum jail term for public officials who take bribes and new powers for the country's Federal Audit Office to search government books and records for corruption at any time. Previously, the office could only conduct an audit two years after a budget was executed.

These anti-corruption measures are secondary laws implementing the details of President's Nieto's National Anti-Corruption System, which was voted through congress in April 2015.

Comments

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