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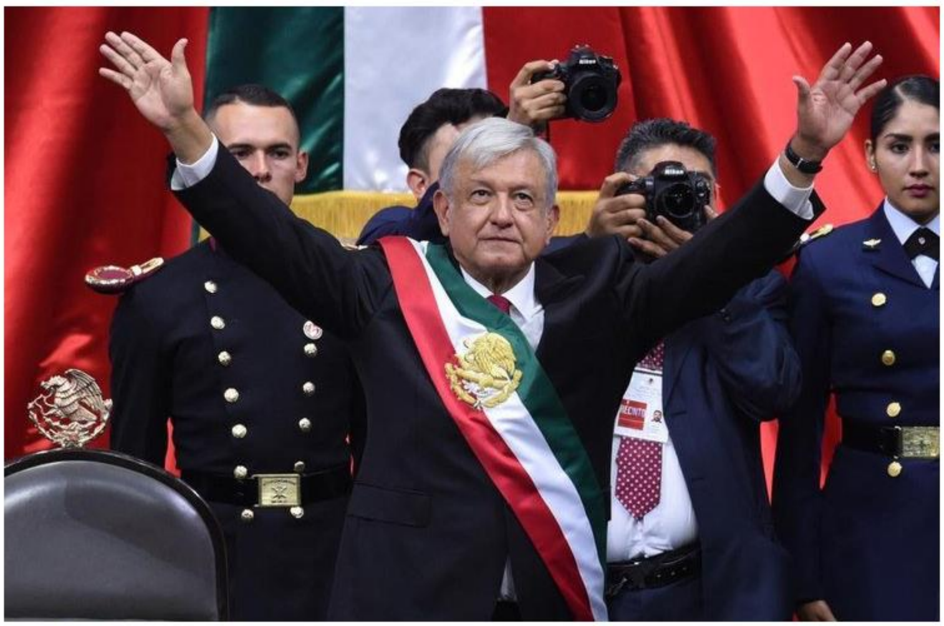
Catching El Peje: what lawyers expect from AMLO's presidency

Tom Muskett-Ford 24 May 2019

Mexican President Andrés Manuel López Obrador is popularly known as El Peje because of his Tabasqueño accent. The nickname comes from pejelagarto (literally, fishlizard), an alligator-like fish from his native Tabasco. Much like his freshwater namesake, it's hard to pin down what he is, so Latin Lawyer asked some of Mexico's top lawyers for help.



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López Obrador was elected president last year with the largest popular mandate since the end of one party rule by the PRI in 2000. His campaign pledge to deal with endemic corruption and the huge gap between rich and poor resonated with many tired of unresolved graft scandals, endless drug wars and grinding poverty. But how López Obrador would achieve these laudable goals was much less clear. Before the election, some compared him to Venezuela's Hugo Chávez, predicting a path towards economic and political ruin through egotism and incompetence. Others claimed he was a social

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https://latinlawyer.com/article/1193081/catching-el-peje-what-lawyers-expect-from-amlos-presidency democrat, whose policies might work in western Europe, but were doomed to fail in Mexico. Critics on the left were just as harsh. They slammed his coalition with Christian evangelicals, whose policies would have gone down well in Victorian England. A campaign promise of fiscal rectitude didn't go down well either. Three months into his six-year term, Latin Lawyer checked in with some of Mexico's leading lawyers to ask what actions his government will take. Below are six things to expect from *El Peje*'s presidency.

1. Uncertainty

The list does not start well. There's a consensus among Mexico's legal community that López Obrador's decision to cancel construction of Mexico City's new international airport sets an extremely bad precedent for investment and may damage the health of law firms' transactional practices. The decision to abort the part-built US$14 billion project came after 1 million Mexicans voted in one of the world's worst attended referendums (there were 89 million eligible voters). Despite the extremely low turnout, López Obrador, who called the plebiscite over corruption concerns, honoured the 70% majority in favour of scrapping the project.

Von Wobeser y Sierra SC's Luis Burgueño says it's possible there may have been some corruption associated with the project, but thinks it was largely a clean affair. "There were many competitors, there was a lot of transparency - it was really under the spotlight," he says. He concludes that widespread graft would have been obvious.

Many Mexican lawyers are very concerned. "The decision to cancel the airport... is probably the worst decision that has been taken by a president in decades," says Juan Francisco Torres Landa of Hogan Lovells (Mexico). "The absence of economic, legal, operational, aeronautical or logistic support signals brutal uncertainty," he adds. "Its effects will continue to not only impact that project, but the confidence of investors in other new projects, which might see sudden changes without genuine legal or economic basis."

López Obrador's disposition to tear up or rewrite contracts has already extended to the power sector. In early February, the president instructed CFE, which is Mexico's state electricity company, to renegotiate the take-or-pay clauses it has with gas pipeline developers. That's on top of his pre-election pledge to review previously granted oil and gas contracts for signs of corruption.

All these changes are a double-edged sword for the legal community. "Concerns related to the cancellation and/or deferral of auctions and infrastructure projects have surged in the energy sector, which has generated a lot of legal work," says Ritch, Mueller, Heather y Nicolau, SC name partner Thomas Heather. Meanwhile, legal mandates linked to the scrapping of Mexico's new airport have boomed, especially for firms with strong capital markets and project finance practices. The terms for the billions of dollars that had already been poured into the airport's construction required sophisticated restructuring to avoid default.

On the other hand, damage may have been done to transactional practices in the longer term. "We are already seeing the effects of the decision to cancel the airport because the cost of attracting funding has increased and we are at risk of losing investment grade status," says Torres Landa. "In legal work, the volume of transactions has fallen by a significant degree and we now face a lot more regulatory, litigious and restructuring issues."

Thomas Heather, Alberto Saavedra and Juan Francisco Torres Landa

2. More Pemex, more problems?

Pemex is not in good shape. The lumbering state-run oil giant owes US$120 billion, making it the most heavily indebted energy company in the world (Brazil's Petrobras no longer has that distinction). To make matters worse, production hit a record low in January. Still, the company, alongside CFE, is front and centre of López Obrador's plans for the energy sector. A US$1.5 billion tax cut is on its way to help the debt laden company, while oil auctions are being cancelled and joint-ventures are off. If the president wants Pemex to pump more oil, lawyers are concerned about how this will be achieved.

For a start, a bolstered Pemex and CFE could hit competition enforcement in the sector. "It's good to have a strong CFE and a strong Pemex, but we know from experience that every time a government-owned company operates in the market they need some protection because they are not as efficient," says Von Wobeser's Burgueño. "This may mean a weakening of antitrust regulators and more disputes."

López Obrador's recent remarks have done little to calm sceptics' nerves over the strength of the country's institutions. He recently accused the Supreme Court of "dishonesty" and said the boss of Mexico's energy watchdog had conflicts of interest. Slashing regulators' budgets hasn't been good for investors' sleep either. The competition agency was one of several to have its financial resources cut by a third in the president's first budget.

Goodrich, Riquelme Asociados' energy head David Enríquez says his clients, most of which are foreign, are worried and will act if the market is distorted. "The unfair or unequal treat of foreign investment has international protection through a network of treaties," he says. "Foreign investors that see themselves mistreated by the Mexico government won't hesitate in making their rights respected."

Whether ICSID arbitration proceedings are on the horizon remains to be seen, but there is a consensus among those interviewed by Latin Lawyer that more disputes work is likely if attempts to resuscitate Pemex go too far. In the meantime, everyone is on high alert. "Beyond their traditional role, law firms today are extra vigilant over the government's adequate treatment of foreign investors," notes Enríquez.

3. More projects work… maybe

López Obrador's first budget did much to banish claims he was a tax-and-spend socialist. By most accounts, it was a balanced budget. It also included several big infrastructure projects. One is the Mayan Train, a train line that may cost as much as US$8 billion. At the time of publication, more than 70 companies had expressed an interest in the project. Another is the Dos Bocas oil refinery in the state of Tobasco, which will be developed by Pemex. The new administration says the refinery is necessary to address Mexico's limited downstream capacity and reduce its reliance on foreign providers. Meanwhile, the train should provide employment and tourism in the impoverished southeast. Goodrich Riquelme's Enríquez is not so sure. "Budget allocations for projects like the new refinery don't seem to be rational decisions, but merely political ones," he says. "It's difficult to believe in a world that is clearly transitioning toward natural gas and renewable energy… that Mexico is choosing to put taxpayers' money in projects that not only have negligible returns on investment, but are contradictory with international agreements to do with climate change."

Others are more optimistic. "If Pemex and the CFE are strengthened, we could have an era where these companies are a very important motor of development and project finance, so long as they offer financeable conditions," says Diana Pineda, counsel at González Calvillo, SC. Still, she hopes the government won't trample over independent regulators and leaves space for private operators.

Brian Minutti, a partner at Chávez Vargas Minutti Abogados, SC, is also hopeful. "The signals the administration has sent about the funding of projects seem to be positive," he says. He notes the government's willingness to consider tax incentives for companies that want to tap the capitals markets. "The main challenges will be to determine which projects will be the government's priority, as we can expect that all efforts will be focused around them during the first few years."

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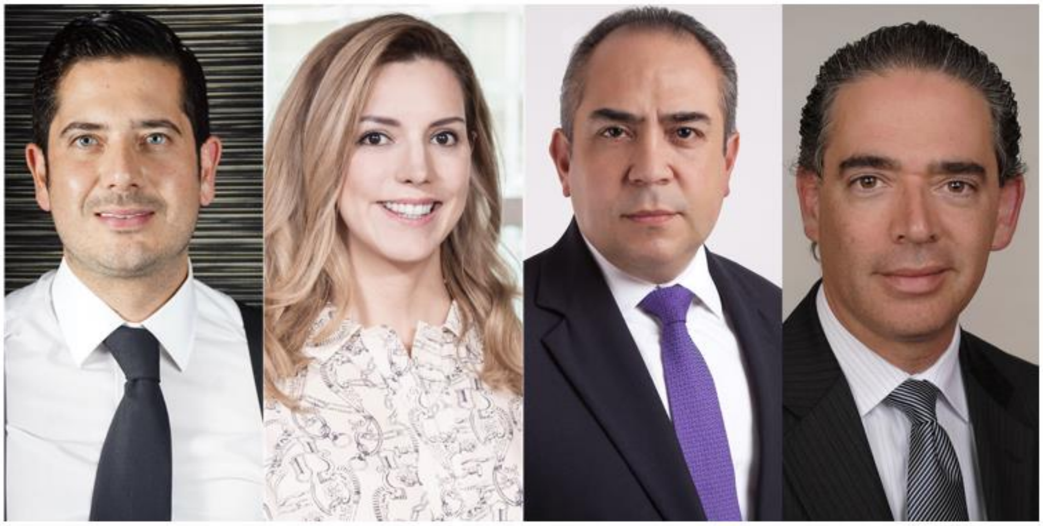

Brian Minutti, Diana Pineda, Luis Burgueño and David Enríquez

4. An iron fist against corruption

Mexico has coined some of the world's best corruption one-liners including *sin transa no avanza* (without cheating you don't get anywhere) and *un político pobre, es un pobre político* (a politician who is poor is a poor politician), yet the country is woefully behind when it comes to tackling its rampant corruption problem. While much of Latin America has been busy naming and jailing over the past five years, Mexico has endured a series of scandals with few consequences for anyone high up in the public or private sector. Unsurprisingly then, López Obrador's main campaign pledge to tackle corruption was popular. Some lawyers now expect serious action.

"There's no doubt that the government will take an iron-fisted approach to fight against corruption," says Chávez Vargas' Minutti. His firm, which often works with government agencies, has launched a compliance subsidiary, separated by a Chinese wall, in preparation for the anticipated uptick in demand for such work. "Within a few weeks of government, the administration has been emphatic in its zero-tolerance policy, using it as its main motivation to cancel the airport, pursue fuel theft and review energy contracts with the CFE," he notes.

The previous administration passed anti-corruption reforms between 2015 and 2017. These included amendments to the criminal code in 2016 that introduced corporate criminal liability for 26 offences, including money laundering, bribery and obstruction of justice. That same year, Mexico passed a bill to introduce an independent body responsible for investigating government officials and companies suspected of corruption called the National Anti-Corruption System (SNA). Companies that fall foul of the regulator face serious consequences, says Minutti, who describes the legislation as some of the most punitive in Latin America. "The fines are cumulative, economic, restrict individual freedom, and have the same priority as tax credits," he notes. They can even end in a company's dissolution.

Despite passing these laws, the previous administration never appointed an SNA special prosecutor, and only a few of the state governments appointed the judges responsible for enforcing the new legislation. Cynics said this was because corrupt government officials realised they had created something they couldn't control, but López Obrador has yet to appoint a head either.

Still, it's undeniable that López Obrador's hard stance against corruption is more than rhetoric. A constitutional article that allows the police to detain suspected murderers and rapists has already been extended to various white collar crimes including illicit enrichment and abuse of power. Whether he uses the existing rulebook or tears it up, companies would do well to have a watertight defence. "Anti-corruption has become the most important topic in Mexico, so any company operating must ensure they are complying with the current standard," says Minutti.

5. Strikes

Mexican workers are not paid very much. Among those with formal employment (some 40% of the population), about one in seven earns the minimum wage, which is US$156 per month for everyone not living on the border with the US, where it is US$270. In comparison, the minimum wage in Ecuador, Paraguay and Uruguay – when recognised by employers – is more than US$350 per month.

One of López Obrador's campaign promises was that he will force unions to get support from at least 30% of workers before they sign agreements with employers. This is important because union bosses often reached "protection agreements" with employers that lined their own pockets but kept wages low, and had no employee support. By some estimates, nine in every 10 collective bargain actions were resolved this way.

Santamarina y Steta's Alberto Saavedra thinks changes like these will revolutionise labour relations. "The so-called fourth transformation isn't merely a change of government, it's a change of regime and one of the areas the government wants to achieve greater equilibrium is between the different productive forces, he says with reference to López Obrador's promise to change the country as radically as the Mexican revolution (1910-1917), the Reforms Laws of President Benito Juárez (1857) and independence from Spain (1821). "That's to say there will be a change in labour relations and a transformation of the union environment."

The changes are already apparent. López Obrador's inaugural promise to improve workers' conditions and double the minimum wage on the US border to US$9.28 per hour set off a wave of strikes across the state of Tamaulipas in northeastern Mexico. The promised wage increase triggered a clause in some collective bargaining contracts that link pay rises to the minimum wage. Workers not on these contracts are striking for the same deal. At the time of writing 48 maquiladoras - the free trade factories that line Mexico's border with the US - had caved to workers' demands. Big companies like Walmart and drinks bottler Arca Continental are among those affected by the strikes, which are reportedly costing local industry US$50 million a day in unfulfilled international contracts.

Von Wobeser's Burgueño is worried. "There's currently an environment where some aggressive left-wing unions are trying to fill the void left by more traditional unions affiliated with the PRI, which has lost a lot of clout," he says (PRI was the party of former President Enrique Peña Nieto and ruled the country for most of its modern history). These upstart unions and potential López Obrador voters may be pushing the boundaries to see how far the administration will go. "This a real concern and everyone should be talking to their labour lawyers," he says.

Bosses of foreign companies that see Mexico as a cheap source of labour may be in for a rude awakening. "Businessmen must respond to this new reality and work with employees, generating the production necessary to improve general labour conditions," says Santamarina's Saavedra. He thinks better worker compensation is now inevitable.

6. More law firm consolidation

The Mexican legal market is large, but famous for its splits. However, top lawyers expect the market to consolidate under López Obrador.

Consolidation is likely as firms adapt to the change in work on offer. As transactional work slows down and regulatory and disputes work increases, law firms that are not full service will begin to suffer, making lateral hires or full scale mergers attractive, notes Hogan Lovells' Torres Landa. "Adapt or die seems to be rule of the game."

Firms may find the necessary resources for survival from abroad. Mexico has attracted foreign firms for some time. The question is whether they will continue to come in the present climate. Several firms (for example, Philippi Prietocarrizosa Ferrero DU & Uría) are eyeing tie-ups in the country. Santamarina's Saavedra doesn't think López Obrador presidency will dissuade them from coming. "International firms' decisions to enter a specific market are long-term," he says. "The country has interesting potential in the medium and long-term."

Goodrich Riquelme's Enríquez disagrees. "By [López Obrador] continuing the process of destroying potential economic value, I doubt more firms are interested in establishing themselves in Mexico," he says.

Whatever the case, if transactional work continues to dip, it's probable that firms that don't have a broad offering may resort to joining forces with or acquiring non--transactional teams, or even whole outfits.

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Fish or alligator?

The picture that emerges, therefore, of López Obrador remains a muddled one. His promise to stamp out corruption and improve the lives of everyday Mexicans is praiseworthy. Indeed, there's clearly something wrong when only a handful of conflict-ravaged Central American countries and Venezuela score worse than Latin America's second-largest economy on Transparency International's Corruption Perceptions Index. However, most of the lawyers interviewed by Latin Lawyer for this article expressed serious concerns about how López Obrador plans to achieve this. On the one hand, the president has repeatedly promised to respect private business, maintain fiscal rectitude and even told striking workers to think of their company's financial health. On the other, he's scrapped allegedly corrupt projects without clear proof of wrongdoing and has already lambasted several regulators. What the legal community wants is clarity: a promise to respect watchdog oversight and project integrity. What they are getting is a *pejelagarto*, a harmless fish... or possibly a dangerous alligator, but early observers aren't quite sure which.

Country : Mexico, International