

## New Business Opportunities in Mexico Energy Market Raise Foreign Corrupt Practices Act (FCPA) Concerns

Article By:

Ryan C. Myers

---

After clearing a constitutional hurdle in late 2013, Mexico plans to open its energy market to foreign participation for the first time in seventy-five years, with the first investment opportunities possible later this year. Mexico has more than 10 billion barrels of proven petroleum reserves, and the country will face no shortage of potential investors.

But companies looking to participate in the newly available market would be wise to consider the compliance risks that come with doing business in Mexico. In particular, companies interested in Mexican energy should have a firm understanding of the **Foreign Corrupt Practices Act** and should adopt compliance policies tailored to the Mexican business climate.

Pending legislation will define Mexico's new energy policy, including the details of foreign participation. At the heart of the energy reforms, however, is the ability for foreign companies to participate in exploration and production. Opportunities are also expected for foreign investment in midstream and downstream operations, as well as in Mexico's electricity utilities. The Chief Executive Officer of Mexico's state-owned oil company, **Petroleos Mexicanos, or Pemex**, has said the first new opportunities may include partnerships between Pemex and foreign producers.

### Corruption Risks for Foreign Companies

Unfortunately, the probability of foreign players encountering corruption risks is greater in Mexico than in many other nations. Transparency International's Corruption Perception Index rates Mexico with a score of 34 out of 100, with scores ranging from zero (highly corrupt) to 100 (very clean). This places Mexico 106<sup>th</sup> out of 177 countries surveyed. And a recent poll suggests this perception of corruption is shared within Mexico, with 88 percent of Mexicans saying they associate Pemex with corruption.

This challenging business climate is reflected in United States criminal enforcement actions. Despite barring most foreign participation since 1938, Mexico's energy market has not avoided the attention of the **U.S. Department of Justice**. For example:

- In 1982, federal prosecutors obtained an indictment accusing U.S.-based companies and individuals of bribing Pemex officials in order to obtain contracts for the supply of oilfield

equipment. Considered one of the first large-scale FCPA prosecutions, this case established the Department of Justice's now-longstanding position that improper payments to officials of state-owned companies, such as Pemex, can qualify as bribery of foreign officials under the FCPA.

- More recently, in 2010, federal prosecutors brought charges against the U.S. subsidiary of a Swiss energy company for paying bribes to secure business with government-owned electricity utilities in Mexico. The company paid close to \$60 million in criminal and civil penalties as part of an agreement resolving these and other violations.
- In the same year, an oil and gas services company agreed to pay more than \$50 million to settle charges related to bribing Mexican officials to avoid customs payments, among other violations.

## Risk-Based Compliance Programs Are the Best Defense

Cases like these, along with the ongoing high-profile bribery investigation of Wal-Mart Stores Inc. for its ventures in Mexico, highlight the need for businesses investing in the Mexican energy sector to adopt a compliance program tailored to the country's corruption risks. The value of such a program extends beyond avoiding criminal corruption violations. Indeed, the Department of Justice has made clear that when **FCPA violations** emerge, a defendant hoping to reach a positive resolution with prosecutors should have a compliance program reflecting genuine attempts to identify and account for corruption risks particular to the country in which the defendant is doing business and the applicable industry. Therefore, companies planning to take advantage of the new opportunities in Mexico should prepare now by developing compliance policies and procedures that address the corruption risks they will likely encounter.

© 2025 Bracewell LLP

---

National Law Review, Volume IV, Number 31

Source URL: <https://natlawreview.com/article/new-business-opportunities-mexico-energy-market-raise-foreign-corrupt-practices-act->