

FCPA Risk Overview

Latin America

Argentina • Brazil • Chile • Colombia • Mexico



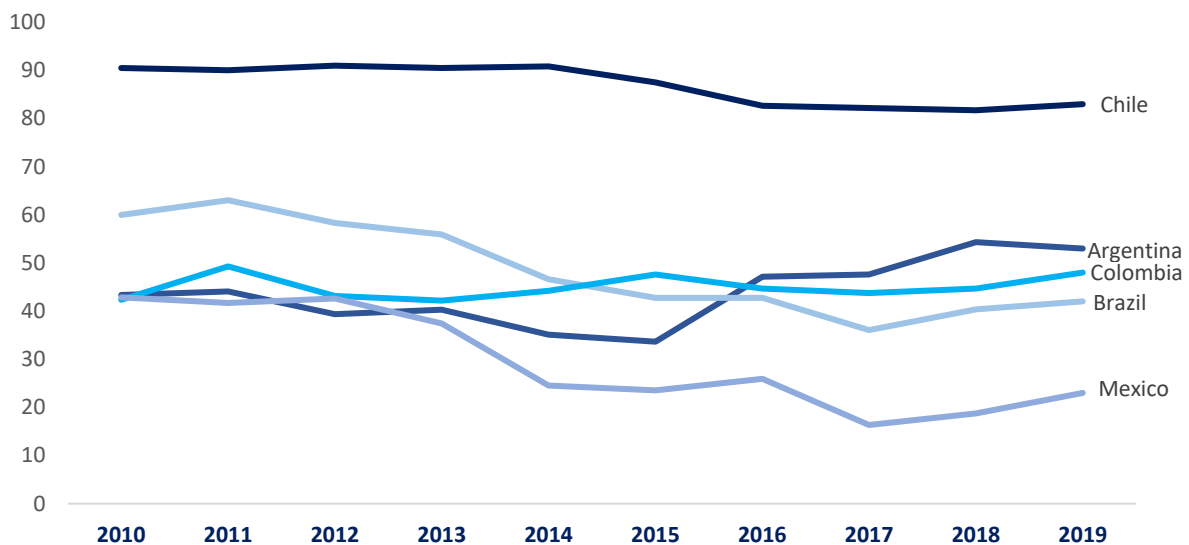


Due Diligence | Investigations | Advisory

This report provides an overview of FCPA and more general corruption risks for the five largest economies in Latin America: **Argentina, Chile, Colombia, Brazil, and Mexico**. For these five countries, the two most widely used measures of public corruption are in broad agreement. Transparency International's Corruption Perceptions Index and the Control of Corruption indicator from the World Bank's Worldwide Governance Indicators show that most countries in this group are clustered around or just below the global median in terms of performance. The exception of Chile, which is a clear outlier and among the highest performing countries in the world in terms of governance and control of corruption.

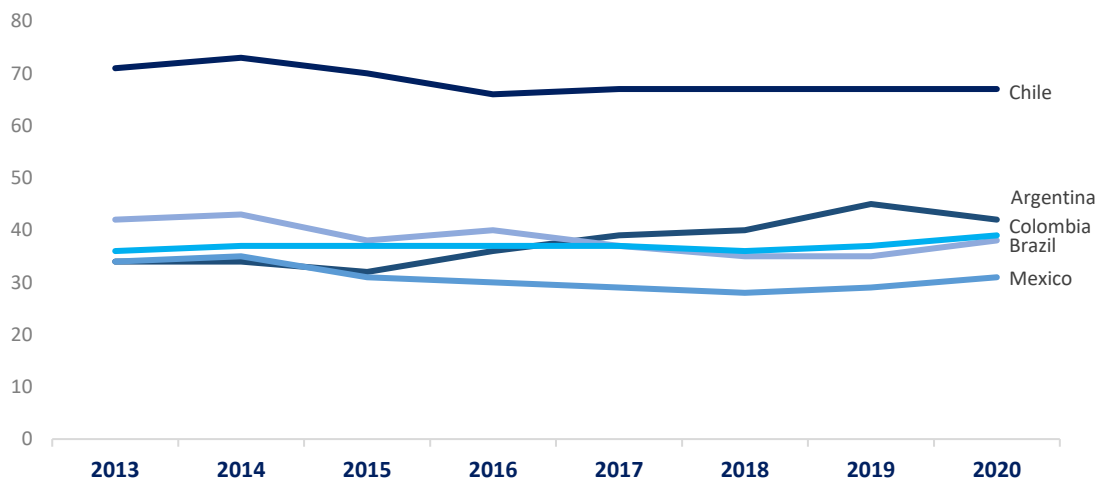
Control of Corruption, World Bank Worldwide Governance Indicators

Best=100 | Median=50



Transparency International Corruption Perceptions Index Score

Best=100 | Median=39

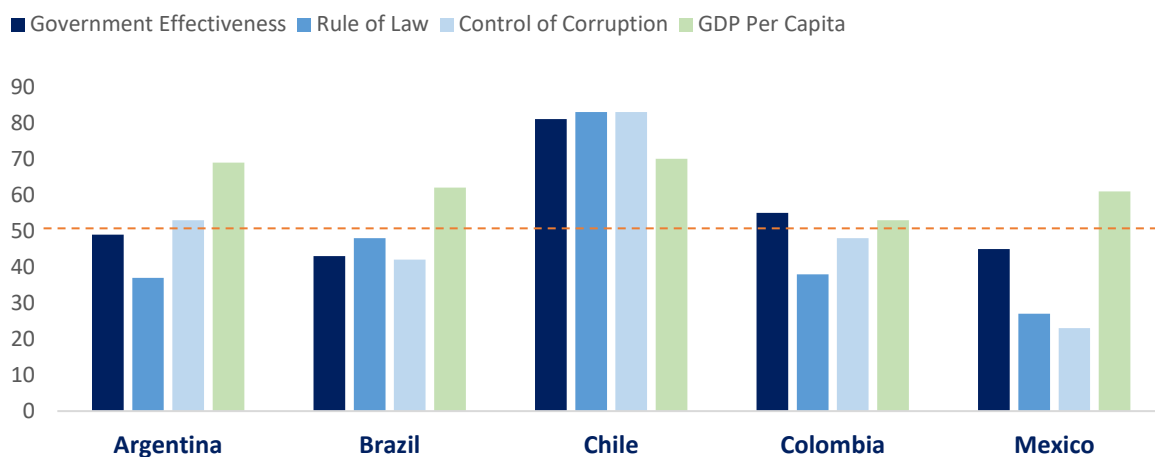


Benchmarking Control of Corruption and Government Performance

Throughout the world, good governance and economic growth are mutually supporting and correlate highly with one another. Because of this, comparing GDP per capita with key governance metrics provided by the World Bank's Worldwide Governance Indicators can provide a snapshot of whether a country is an underperformer in comparison to its level of development.

In the chart below, GDP data has been converted to percentile rank. This means that the theoretical median country would have scores of 50 on all four indicators below. Because of the high correlation between GDP per capita and WGI scores, comparably wealthy countries should present comparable levels of government performance. Argentina and Mexico display large gaps between economic and governance performance and can be seen as underperformers.

Governance Indicators vs GDP Per Capita

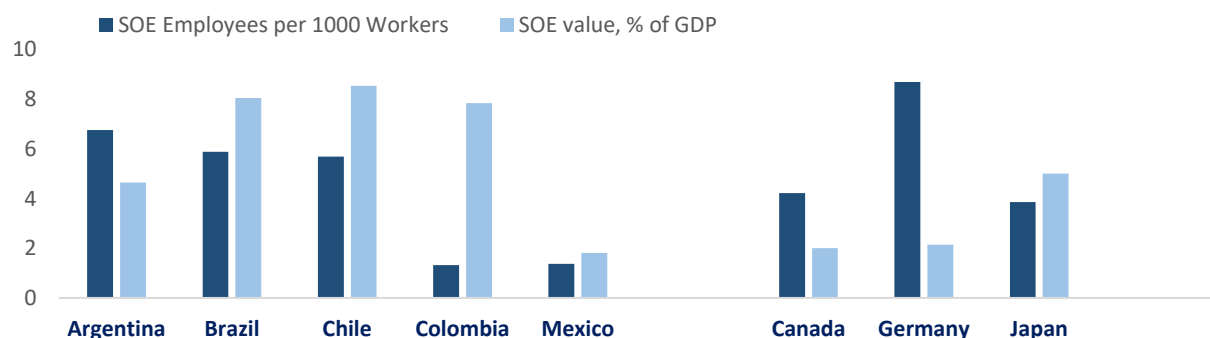


Baseline FCPA Risk: State-Owned Enterprises

Bribes paid to SOE officials typically make up more than half of all FCPA cases in a given year. It is challenging to quantify the prevalence of SOEs in any country and there is no direct way to benchmark risks. However, SOEs' overall share of GDP and size of the SOE workforce can indicate a general baseline of FCPA risk. This data as reported to the OECD shows that in Argentina, Brazil, and Chile the prevalence of SOEs is notable. (Canada, Germany, and Japan have been included for comparative purposes.)

Prevalence of State-Owned Enterprises

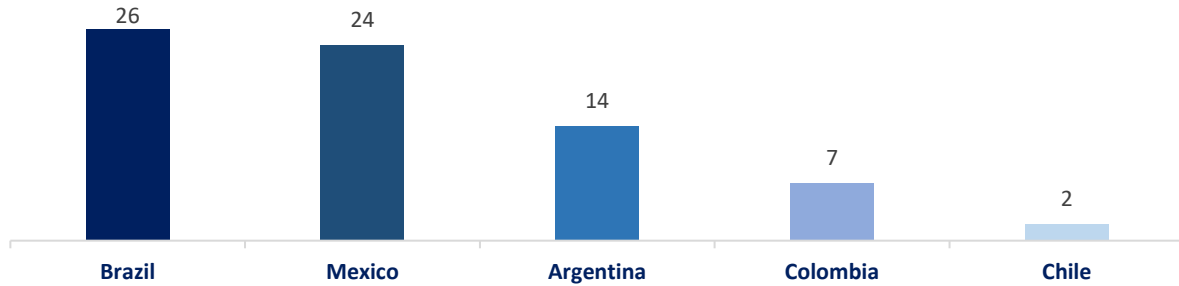
OECD; World Bank Data



FCPA Enforcement

FCPA enforcement in the countries surveyed here has focused heavily on the oil & gas and healthcare sectors, with nearly half of all cases pertaining to these sectors. These are also the most penalized sectors elsewhere in the world, with oil & gas and healthcare cases making up approximately one-third of all FCPA case worldwide.

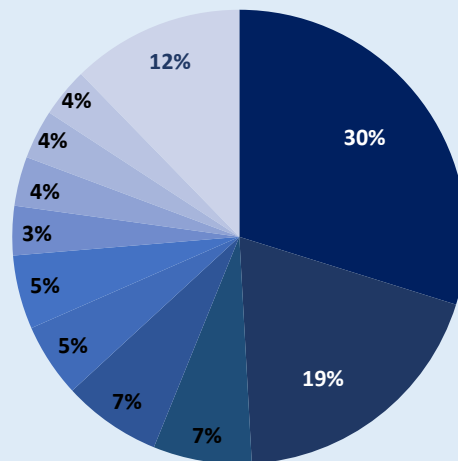
Total FCPA cases by country



FCPA Cases by Sector

Top 5 Latin American Economies

- Oil & Gas
- Healthcare
- Energy Generation/Distribution
- IT
- Transportation
- Agriculture
- Communications
- Consumer Products
- Logistics
- Retail
- Others



Recent FCPA Enforcement in Latin America by the Numbers

38%

31 of 82 FCPA cases in the last five years have been in the countries surveyed in this report.

2

Two of the top five biggest initial FCPA sanctions of all time (Odebrecht and Petrobras) have been in Brazil.

1/2

Nearly half of all cases in the countries surveyed here have been in Oil & Gas and Healthcare sectors.

18%

Nearly one fifth of the FCPA cases reviewed here have been in Brazil.

FCPA Case Concentration

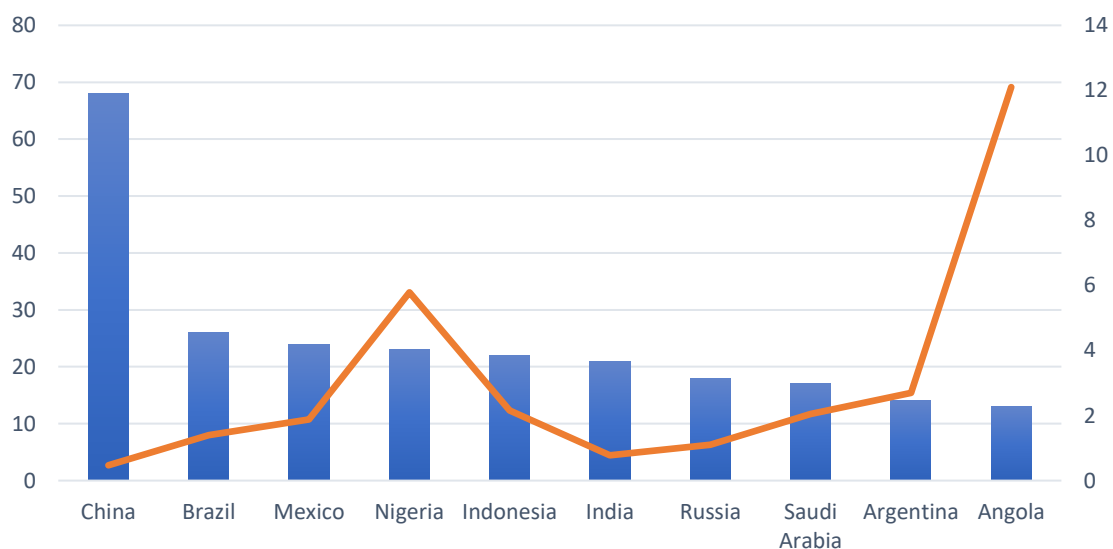
Absolute numbers of FCPA enforcement cases can be misleading because the size of countries' economies and the volume of cross-border economic activity can vary considerably. This graph adjusts FCPA enforcement according to the size of a country's economy to provide a better picture of the on-the-ground prevalence of corrupt practices potentially subject to FCPA enforcement.

Represented below are the 10 countries most involved in FCPA cases as of January 2021, a group which includes Mexico, Brazil, and Argentina. The blue bars represent the number of total cases per country while the orange line represents the number of cases in proportion to the size of each country's economy—an "FCPA case concentration" indicator which is calculated here as cases per \$100bn of GDP.

This case concentration figure helps to illustrate, for example, how the large number of FCPA cases involving Chinese foreign officials is mostly a function of the size of China's economy. On the other hand, the intensity of FCPA enforcement relating to Nigerian or Angolan officials is noticeably disproportionate to the size of those countries' economies.

Total FCPA Cases

FCPA Case Concentration (cases per \$100bn GDP)



Iraq, Venezuela, and Gabon have been removed from the top 10 because of anomalous enforcement patterns.

Elevated FCPA Case Concentrations in Argentina, Mexico, and Brazil

Among Latin American countries, Argentina shows the most elevated FCPA case concentration. Brazil and Mexico also show elevated concentrations. While Argentina does not present the risk concentrations seen in Angola or Nigeria, it is still a clear outlier, particularly when considering the country's economic performance.

Argentina

14 Total FCPA Cases

Argentina presents elevated corruption risks for a country with its level of economic development. FCPA cases have occurred in a wide range of sectors, suggesting widespread risk. As in much of the world, the healthcare and oil & gas sectors present the most significant risks. Despite a history of robust enforcement levels, only three cases have involved Argentine officials in the last five years.

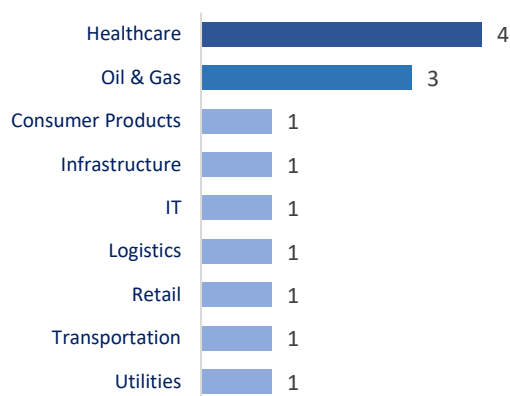
Corruption Indicators

	Argentina	G7 Average
Transparency International Corruption Perceptions Index	42	71
World Bank Control of Corruption Score	53	88
World Justice Project Absence of Corruption Score	52	77

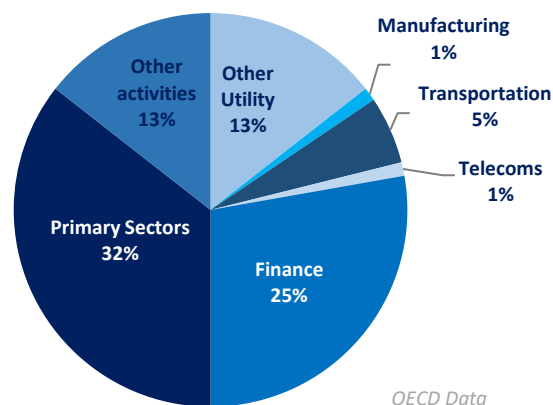
**All indicators are scores/100 or are percentile ranks, 100 = best. Some scores have been modified accordingly.*

1-33 34-66 67-100

Total FCPA Cases by Sector



Sectoral Distribution of SOEs



FCPA Risk Map: Argentina Cases Since 2016

FCPA Case	Sector	Foreign Officials Involved
LAN Airlines	Aviation	Labor Union Officials
Olympus	Healthcare	Healthcare Practitioners
Odebrecht	Construction	Unspecified Officials

FCPA Case Study: LAN Airlines

In 2016 LAN's successor company LATAM Airlines paid more than \$30 million to settle civil and criminal cases with the SEC and DOJ. It was alleged that LAN's CEO had authorized illicit payments intended to influence the leaders of labor unions during negotiations. Payments were allegedly disguised through a sham consulting agreement. Because the settlements cover alleged breaches of the books and records and internal controls provisions of the FCPA, whether the involved labor union representatives were deemed "foreign officials" under the statute was not directly addressed in publicly available documents.

Brazil

26 Total FCPA Cases

Brazil has recently experienced very high levels of FCPA enforcement. Nearly one fifth of all FCPA cases in the last five years have involved Brazilian officials. The Odebrecht/Braskem and Petrobras cases are two of the largest ever FCPA cases as measured by initial sanctions. Corruption among elected and party officials has been a persistent feature of Brazil's public life in recent years, which is reflected in FCPA enforcement patterns.

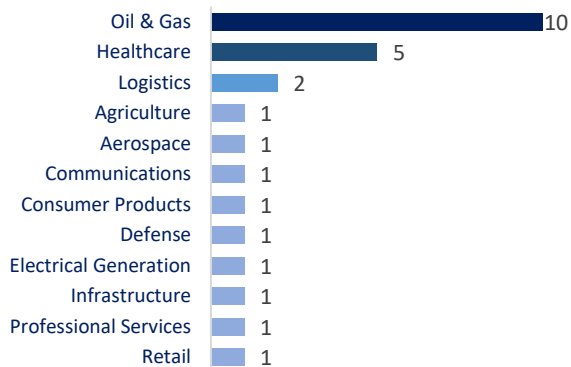
Corruption Indicators

	Brazil	G7 Average
Transparency International Corruption Perceptions Index	37	71
World Bank Control of Corruption Score	42	88
World Justice Project Absence of Corruption Score	45	77

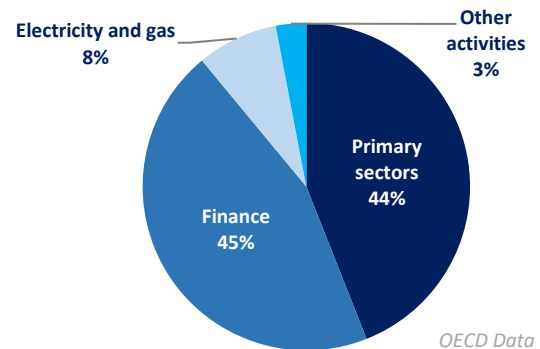
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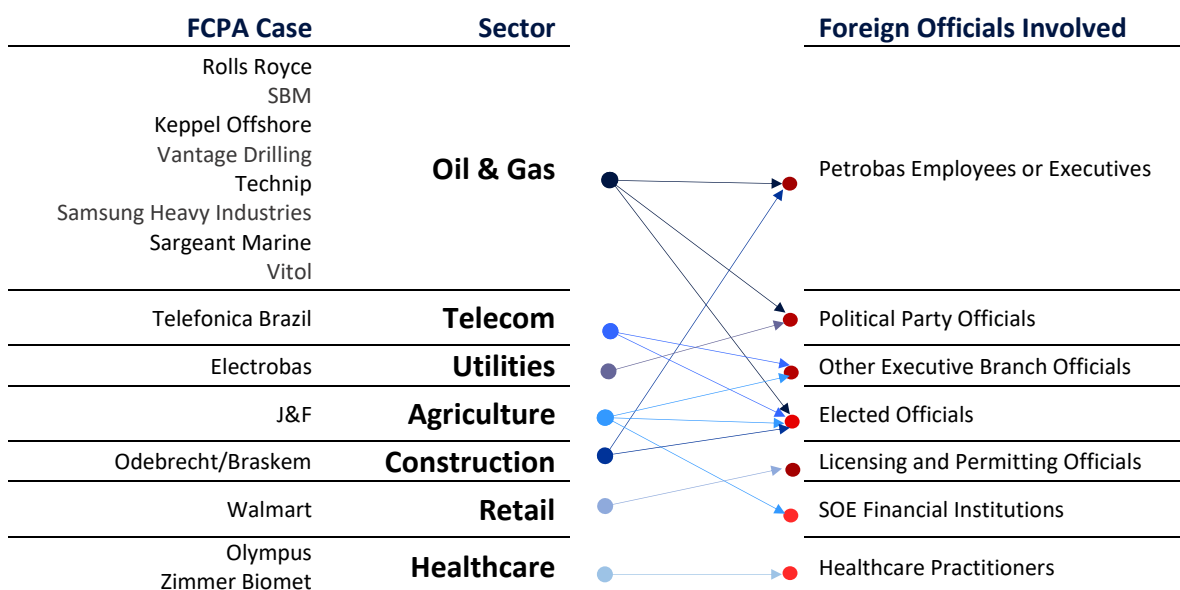
Total FCPA Cases by Sector



Sectoral Distribution of SOEs



FCPA Risk Map: Brazil Cases Since 2016



FCPA Case Study: Odebrecht and Braskem

Between 2001 and 2016, the Brazilian infrastructure company Odebrecht and its chemicals subsidiary Braskem allegedly paid nearly \$800 million in bribes throughout Latin America and Africa to secure contracts for major projects. The companies were alleged to have run an entire business unit focused on providing illicit payments to secure contracts. 2016 and 2017 settlements resulting from an international investigative effort resulted in Odebrecht and Braskem agreeing to an initial penalty of \$3.5 billion to be paid to US, Brazilian, and Swiss authorities. This amount would have been the largest ever FCPA settlement but was subsequently significantly reduced after Odebrecht filed for bankruptcy. Several criminal convictions have resulted from the matter, including that of former Brazilian President Luiz Inacio Lula da Silva, although his conviction for allegedly accepting bribes was recently overturned.

The Odebrecht case originated in the large-scale Brazilian corruption investigation known as *Operação Lava Jato*, or “Operation Car Wash.” This operation has also resulted in Petrobras’ \$1.78 billion FCPA settlement in 2018. Related investigations are still ongoing, with Braskem, which is co-owned by Odebrecht and Petrobras, disclosing in March 2021 that it is the subject of an ongoing corruption investigation in Mexico.

The Odebrecht/Braskem case and other *Lava Jato* investigations have caused disruption at the highest political levels throughout Latin America, implicating politicians in several countries.

Locations of Alleged Bribe Payments: Odebrecht/Braskem



Chile

2 Total FCPA Cases

Its recent political unrest notwithstanding, Chile is among the best performers in Latin America in terms of governance and corruption indicators. Chile's high level of economic development translates into strong government performance, unlike some of the other countries in the region which underperform in this regard. Chile's elevated prevalence of SOEs has not translated into elevated FCPA risks.

Corruption Indicators

	Chile	G7 Average
Transparency International Corruption Perceptions Index	67	71
World Bank Control of Corruption Score	83	88
World Justice Project Absence of Corruption Score	69	77

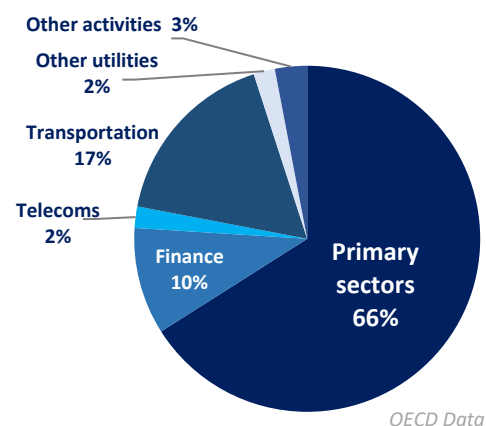
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1-33 34-66 67-100

Total FCPA Cases by Sector



Sectoral Distribution of SOEs



FCPA Risk Map: Chile Cases Since 2016

FCPA Case	Sector	Foreign Officials Involved
SQM	Extractives	Elected Officials

FCPA Case Study: Sociedad Química y Minera de Chile (SQM)

The Chilean mining company paid more than \$30 million to settle violations of the FCPA allegedly occurring between 2008 and 2015. The company was found liable in 2017 for insufficient internal controls which allowed for numerous payments to be made to foundations linked with Chilean politicians, most notably those with influence over mining policy. SQM allegedly falsified books and records to cover for these illicit expenses by creating false invoices. The DOJ alleged that more than \$5 million was paid to vendors who provided no evident services to the company during the period in question. In 2018 SQM's former CEO settled related criminal charges with the SEC.

Colombia

7 Total FCPA Cases

While seven FCPA cases have involved alleged payments to Colombian officials, only three have been settled in the last five years. Colombia does not present notably elevated risks on any of the dimensions discussed in this report. Its valuable SOE primary sector (as reported in OECD data) has not given rise to any notable corruption trends.

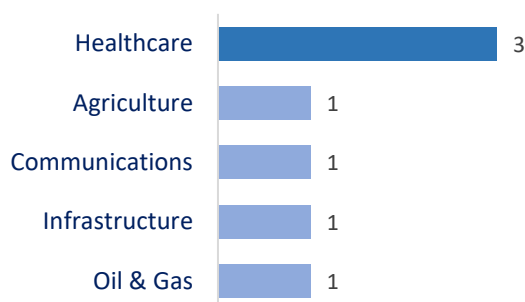
Corruption Indicators

	Colombia	G7 Average
Transparency International Corruption Perceptions Index	39	71
World Bank Control of Corruption Score	48	88
World Justice Project Absence of Corruption Score	39	77

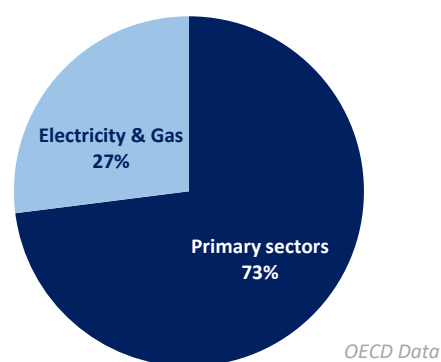
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Total FCPA Cases by Sector



Sectoral Distribution of SOEs



FCPA Risk Map: Colombia Cases Since 2016

FCPA Case	Sector	Foreign Officials Involved
Odebrecht	Construction	Unspecified Government Officials
Olympus	Healthcare	Healthcare Practitioners
Alere	Healthcare	Government Contractors*

FCPA Case Study: Alere

The medical diagnostics company reached a \$13 million settlement with the SEC regarding violations of the FCPA's books and records and internal controls provisions, along with other securities violations. Alere's Colombian subsidiary had allegedly distributed payments over several years to a manager at a healthcare promotion organization that contracted with the government to provide services. This organization was normally considered a private entity. However, during part of the time of the alleged illicit payments, the organization had come under the control of the Colombian Ministry of Health. In the view of the SEC, this interim control by the Ministry rendered the organization an "instrumentality of the Government of Colombia" and therefore the bribe recipient was classified as a foreign official under the FCPA.

Mexico

24 Total FCPA Cases

Mexico's 24 FCPA cases represent the second highest in this group of countries both in terms of absolute numbers (after Brazil) and when weighted against the size of its economy (after Argentina). Mexico falls into the bottom third of countries worldwide on all the indicators surveyed here and presents elevated corruption risks involving a variety of public officials.

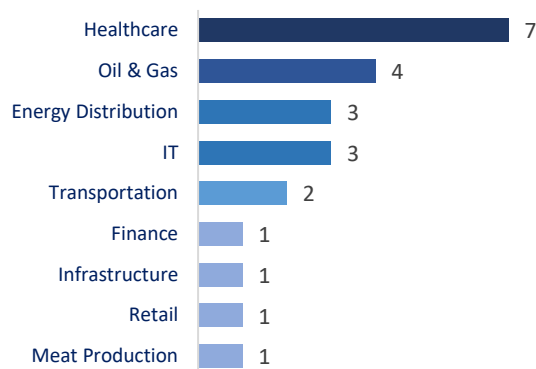
Corruption Indicators

	Mexico	G7 Average
Transparency International Corruption Perceptions Index	31	71
World Bank Control of Corruption Score	23	88
World Justice Project Absence of Corruption Score	23	77

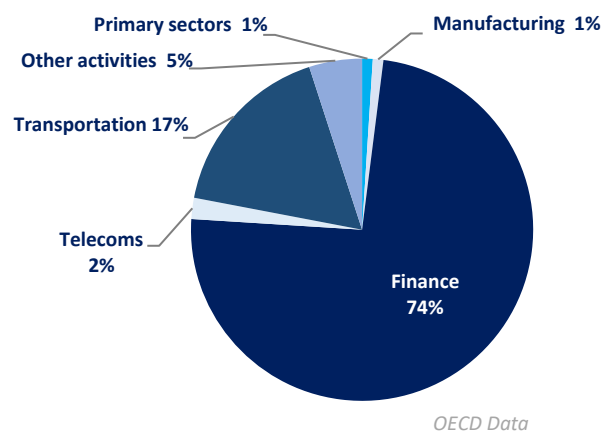
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Total FCPA Cases by Sector



Sectoral Distribution of SOEs



FCPA Risk Map: Mexico Cases Since 2016

FCPA Case	Sector	Foreign Officials Involved
Olympus Teva Pharmaceuticals Fresenius	Healthcare	Healthcare Practitioners
Key Energy Services Vitol	Oil & Gas	PEMEX Officials
Walmart	Retail	Unspecified SOE Executive
Mondelez	Food	State-Level Cabinet Officials
World Acceptance	Finance	Officials of SOE Unions
Odebrecht/Braskem	Construction	Licensing and Permitting Officials
		Customs Officials

FCPA Case Study: Walmart

The retail giant paid \$282 million to the SEC and DOJ to settle alleged violations of the FCPA in Mexico, Brazil, China, and India. Regulators found that the company had insufficient internal controls in Mexico to intervene in third-party misconduct that led to improper payments of up to \$6 million to government officials, mostly for licensing and permitting matters.



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