

The New Mexican National Anticorruption System is Published

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PRACTICES Mexico, Asia, Energy, Power and Natural Resources, Mexico Energy Reform

On July 18, 2016, the new anticorruption system was published in the Federal Gazette. This new legal framework implements the 2015 Constitutional reform on anticorruption and is comprised by the General Law for the National Anticorruption System, the Organic Law of the Federal Tribunal for Administrative Justice and the General Law for Administrative Responsibility (jointly the “**National Anticorruption System**”) and amendments to the Federal Criminal Code and the Organic Law of the Federal Public Administration.

It is very important for all Mexican and foreign companies doing business in Mexico to comply with the obligations set forth in the National Anticorruption System to prevent acts of corruption.

The National Anticorruption System will be responsible for the nationwide anticorruption policy and for establishing the guidelines that all levels of government (executive, legislative and judicial branches, either federal or local as well as the public officials of autonomous entities such as the Federal Economic Competition Commission, Energy Regulatory Commission, National Hydrocarbons Commission and the Central Bank) and personnel of PEMEX and CFE (except for their board members) and must follow the prevention, identification and sanctions applicable to acts of corruption and crimes committed by public officials and private parties. The Anticorruption System mandates the creation of a National Digital Platform as a public registry of all private parties and public officials banned from participating in government contracting processes.

The General Law for Administrative Responsibility establishes the rules and guidelines to prevent and sanction the unlawful participation in administrative procedures, influence peddling, bribery, wrongful exercise of public funds, improper hiring of former public officials, collusion in public bid procedures (including procedures called by foreign entities), use of false information to apply for administrative permits or authorizations, among other acts of corruption. Therefore, public officials will be obliged to disclose (i) existing assets; (ii) potential conflicts of interest; and (iii) their tax returns.

The General Law for Administrative Responsibility imposes the following mechanisms for private parties to prevent corruption: (i) organizational guidelines establishing the areas in charge of doing business with the government, identifying in a hierarchical manner the responsibilities of each; (ii) a code of conduct; (iii) recruiting policies addressed to detect potential liabilities when conducting business with the government; and (iv) monitoring procedures and accountability for the company’s personnel. Furthermore, reduced sanctions will be given to companies collaborating during the investigations or whistleblowing. Sanctions may increase if the partners, board of directors or internal auditor(s) are aware of the corrupt practices and do not report such conduct and the individuals involved. Private parties confessing their participation in any act of corruption may obtain a reduction of up to 70 percent of the economic sanction. The General Law for Administrative Responsibility enters in force on July 19, 2017, and will repeal the Federal Anticorruption Law for Government Contracts.

The Federal Administrative Court will have a special chamber in charge of judging severe corruption conduct committed by public officials and private parties and will be entitled to impose the corresponding economic sanctions and indemnification resulting from the damages and loss profits caused to the government. The members of the sections of the specialized chamber will be appointed by the President of Mexico for a term of 10 years and shall be approved by the majority of the attending members of the Senate. The specialized chambers in charge of fighting corruption will start operations as of July 19, 2017.

Should you have any questions related to the implementation of the new Anticorruption System in Mexico, please contact any of the lawyers listed below.