

# Upcoming Mexico Anti-Corruption Law: What Does it Mean for Companies Doing Business in Mexico'

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**PRACTICES** Antitrust and Competition, Mexico, Foreign Corrupt Practices Act FCPA, Energy, Power and Natural Resources, Mexico Energy Reform, International

**Updated:** [New Mexico Anti-Corruption Law: What Does it Mean for Companies Doing Business in Mexico?](#)

Two years ago, Mexico began a process to completely change the legal framework regulating anti-corruption in the country. On May 27, 2015, a Constitutional amendment was published in the Official Gazette of the Federation to create the new framework against corruption. On July 18, 2016, Congress enacted new laws and also amended other existing codes and regulations,<sup>1</sup> including among the new laws, the General Law of Administrative Responsibility (the “Law”) which will enter into force on July 19, 2017. The Law will replace the Federal Anti-Corruption Law on Public Procurement and the Federal Law of Administrative Accountability of Public Officials.

The Law intends to sanction both public officials and companies/individuals participating in acts of corruption. Economic sanctions are significant, reaching up to approximately US\$6,221,703. Companies may mitigate sanctions and penalties if they have an “Integrity Policy” in place, including procedures to prevent and report acts of corruption. This means that companies should have an Integrity Policy in place as described below.

Below is a summary of the most salient provisions of the Law, including the Integrity Policy.

## A. Purpose

- To establish administrative sanctions for offenses committed by public officials and private persons (entities and individuals), as well as the process of enforcement, among other things.

## B. Types of Offenses

- **Serious.** Serious offenses include, among other violations, any form of bribery, embezzlement, misuse of public resources, misuse of information, collusion, abuse of official authority, improper influence, and concealment of conflict of interest.
- **Non-serious.** Non-serious administrative offenses include failure to comply with certain responsibilities of public officials (e.g., cooperating with judicial and administrative proceedings, reporting misconduct, etc.).
- **Private.** Actions of private persons (entities and individuals) involved in serious offenses.

## C. Company's Liability

- Companies can be held liable for Private Offenses when individuals acting on the company's behalf or as legal representatives are involved in serious offenses and attempt to obtain benefits for the company.

## D. Private Offenses

Below are the acts of private persons linked to serious administrative offenses.

- **Bribery:** Bribery is defined broadly as the action of promising, offering, or giving any undue benefit to one or more public servants, directly or through third parties, in exchange for those public servants performing or refraining from performing an act related to their duties or to those of another public servant. Bribery is also defined as abusing a real or supposed influence for purposes of obtaining or maintaining, for themselves or a third party, a benefit or advantage, regardless of acceptance or receipt of the benefit or having obtained the desired result.
- **Illegal Participation in Administrative Proceedings:** Participating in administrative proceedings at the federal, state, or municipal level after having been prohibited from doing so because of prior improper conduct.
- **Improper Use of Relationships and Power:** Using or attempt to use one's influence or economic or political power on a public official in order to obtain a benefit for oneself or third parties or to cause damage to a person or a public official.
- **Misuse of Information:** Using false information during an administrative proceeding in order to obtain an authorization, benefit, or advantage, or to damage any person.
- **Collusion:** Taking any joint action with other private parties in order to obtain an undue benefit or advantage in a federal, state, or municipal public procurement process.
- **Wrongful Use of Public Resources:** Misusing public funds (material, human, or financial resources).
- **Wrongful Recruitment of Ex-Public Servants:** Hiring public officials or former public officials who were in office within the last year and who possess privileged information derived from their office, directly resulting in a market benefit or competitive advantage.

## E. Sanctions for Individuals

- Up to twice the amount of the acquired benefits or, if there is no tangible benefit, a fine ranging from approximately US\$415 to US\$622,170.<sup>2</sup>
- Inability to participate in public procurement, leases, services or projects from three months to 10 years.
- Indemnifying for damages incurred by the government and government-owned entities.

## F. Sanctions for Companies

- Up to twice the amount of the acquired benefits or, if there is no tangible benefit, a fine ranging from approximately US\$4,147 to US\$6,221,703.<sup>3</sup>
- Inability to participate in public procurement, leases, services or projects from three months to 10 years.
- Suspension of its activities from three months to three years.
- Dissolution of the company.
- Indemnifying for damages incurred by the government and government-owned entities.

## G. Reduction of Sanctions

- Sanctions may be reduced by a range of 50 percent to 70 percent if the liable person voluntarily informs the authority the existence of an illegal conduct before such person has been notified by the authority about the case. Once a person has informed the authorities, further persons involved may get up to 50 percent reduction in sanctions if they substantially cooperate with the authorities.

## H. Statute of Limitation

- Statute of limitations for serious administrative offenses is seven years as of the date of the conduct occurred or the time that the misconduct ceased.

## I. Integrity Policy

- A company may reduce its liability if the relevant authority determines that the company had in place an adequate “Integrity Policy” (*i.e.*, an adequate anticorruption and compliance policy). The law provides guidelines for companies implementing such a policy, including that companies:
  - Adopt an organization and procedures manual that is clear and complete, including the functions and responsibilities of each of the company’s areas, and clearly specifies the chain of command and leadership throughout the company.
  - Publish and distribute a code of conduct among all members of the organization with systems and mechanisms for real implementation.
  - Have adequate systems of oversight and control that constantly review compliance of the integrity standards in the company.
  - Establish adequate whistleblower and reporting systems that allow for appropriate reporting internally in the company and to the competent authorities, as well as disciplinary procedures for those employees who act contrary to the company’s policies or Mexican law.
  - Have adequate systems and programs for training regarding integrity programs.
  - Establish Human Resources policies intended to prevent the inclusion of individuals who could generate risks to the company’s integrity, in the understanding that such policies may not include discrimination criteria based on nationality, gender, disabilities, social and health conditions, religion, opinions, sexual orientation, or any other that violates human rights.
  - Have mechanisms that assure at all times the transparency and publicity of their interests.

If you have any questions, please contact the lawyer listed below.

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<sup>1</sup> New laws: General Law for the National Anticorruption System, the Organic Law of the Administrative Justice Federal Court, the General Law of Administrative Responsibility and the Federal Accounting and Accountability Law. Amended laws: Federal Criminal Code, the Organic Law of the Federal Public Administration, the Tax Coordination Law, the General Government Accounting Law, and the Organic Law of the Attorney General’s Office

<sup>2</sup> Fines based on MxP\$18.20 per US\$1.00 exchange rate

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