

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

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**PRACTICES** Antitrust and Competition, Mexico, Mexico Energy Reform

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Companies in Mexico estimated a loss of US\$80 million for acts of corruption with government authorities during 2016 according to the first National Survey of Regulatory Quality and Governmental Impact on Companies published by the INEGI (National Institute of Geographical Statistics and Informatics). According to the survey, out of the 4.5 million companies operating in Mexico, 82 percent consider that acts of corruption by public officials are frequent. Pursuant to recent estimates of the World Bank, OAS and the World Economic Forum, the total cost of corruption fluctuates between nine and 10 percent of Mexico's GDP, that is, for every \$100 of wealth generated by the economy, \$10 are used for corruption in Mexico.<sup>?</sup>

Two years ago, Mexico began a process to completely change the legal framework regulating anticorruption 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>2</sup> including among the new laws, the General Law of Administrative Responsibility (the "Law") which entered into force on July 19, 2017. The Law replaced 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. Below is a summary of the most salient provisions of the Law, including the Integrity Policy.

The main purpose of the Law is 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.

The Law distinguishes three types of offenses: serious, non-serious and private offenses. 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. On the other hand, 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.). Finally, private offenses are actions of private persons (entities and individuals) involved in serious offenses.

It is important to note that 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.

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

- **Bribery.** Bribery is the action of promising, offering, or giving any undue benefit to a public servant in exchange for performing or refraining from performing an act related to his/her duties or to those of another public servant. Bribery is also abusing a real or supposed influence for purposes of obtaining or maintaining a benefit or advantage.
- **Illegal Participation in Administrative Proceedings:** Participating in administrative proceedings at any level after having been prohibited from doing so.
- **Improper Use of Relationships and Power:** Using or attempting to use influence on a public official to obtain a benefit 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 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.

<b>Sanctions<sup>3</sup></b>	
<b>For Individuals</b>	<b>For Companies</b>
Up to twice the amount of the acquired benefits or a fine ranging from approximately \$415 to \$622,170 if there is no tangible benefit.	Up to twice the amount of the acquired benefits or a fine ranging from approximately \$4,147 to \$6,221,703 if there is no tangible benefit.
Inability to participate in public procurement, services or projects with government from three months to 10 years.	Inability to participate in public procurement, services or projects with government from three months to 10 years.
Indemnifying for damages incurred by the government and government-owned entities.	Indemnifying for damages incurred by the government and government-owned entities.
	Suspension of activities with the government from three months to three years.
	Dissolution and liquidation of the company.

Sanctions may be reduced by a range of 50 percent to 70 percent if the liable person voluntarily informs the authority the existence of 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.

<sup>1</sup> Sources:

- [Mexico Would be an Economic Superstar Without Corruption](#)
- [The Fight Against Corruption in Latin America and the Caribbean](#)
- [This is How Mexico is Fighting Corruption](#)

<sup>2</sup> New laws: General Law for the National Anticorruption System, the Organizational Law of the Administrative Justice Federal Court, the General Law for Administrative Responsibility and the Federal Accounting and Accountability Law. Amended laws: Federal Criminal Code, the Organizational Law of the Federal Public Administration, the Tax Coordination Law, the General Government Accounting Law, and the Organizational Law of the Attorney-General's Office

<sup>3</sup> Fines based on MxP\$18.20 per USD\$1.00 exchange rate