

New Administrative Penalties Against Individuals and Private Companies as Part of Mexico's Fight Against Corruption

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On July 19, 2017, Mexico's new General Law on Administrative Accountability will take effect, imposing serious penalties on individuals and private companies that violate it, and requiring companies to adopt and implement corporate integrity policies.

On May 27, 2015, the Mexican Constitution was amended to create a National Anti-corruption System. On July 18, 2016, a series of legal reforms were published, which collectively created a legal framework in the ongoing national fight against corruption.

The latest anti-corruption reform includes amendments to existing laws and enactment of nine secondary laws, including the new General Law on Administrative Accountability, which will take effect on July 19, 2017.

Mexican lawmakers have determined that individuals and companies that perpetrate acts of corruption must be subject to the General Law on Administrative Accountability, particularly when linked to administrative violations that are categorized as "gross."

The new law can be divided into two areas: **i)** prevention, and **ii)** sanctions.

Prevention

The new law imposes three requirements on individuals and private companies: **i)** public servant declarations (addressing personal assets, interests, and proof of tax return filings); **ii)** a hiring protocol, and **iii)** an integrity policy.

Among these requirements, the corporate integrity policy is of particular relevance, since in determining the liability of particular private companies, enforcement authorities will look to see if companies have a policy in place that includes at a minimum the following elements:

- Organizational manual and procedures;
- Code of Conduct;
- Control, monitoring, and auditing systems;
- Reporting systems and disciplinary proceedings;
- Adequate training systems and processes, and training in integrity measures;

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- Human resources policies, and
 - Mechanisms to ensure the transparency and publicity of their interests at all times.

As for the above-mentioned protocol, public servants participating in public procurement will be required to apply certain standards when dealing with private individuals, including formulating and abiding by guidelines for business or personal relationships, as well as disclosing possible conflicts of interest (addressing possible impairment of their objective impartial performance of the functions of public servants due to personal, family, or business interests).

Sanctions

Individuals who carry out acts classified as “gross” administrative violations, such as:

- Bribery;
- Unlawful participation in administrative procedures;
- Influence peddling;
- Use of false information;
- Obstruction of investigative powers;
- Collusion on public procurement;
- Misuse of public resources, and
- Improper hiring of former public servants,

will be subject to new administrative (in addition to pre-existing criminal) penalties.

One of the more innovative changes brought about by the new law is separation of the investigation (audit) from the traditional presentation of proof and imposition of sanctions.

The Ministry of Public Function will be in charge of investigating administrative offenses under the new law. In the event the investigating agency determines that the public servant's offense constitutes a serious violation of his duties or that a private individual engaged in a “gross” administrative violation of law, the Federal Tribunal of Administrative Justice will be responsible for imposing the appropriate sanction.

Penalties that may be imposed on private individuals for acts constituting “gross” administrative violations of law may include one or more of the following:

- A fine of up to two times the benefit obtained or, if none, the equivalent of 100 to 150,000 times the daily value of the Unit of Measure and Update¹ (approximately MX\$ 11,323,500.00);
- Temporary debarment from participation in acquisitions, leasing, services, or public works transactions, as appropriate, for a period of not less than three months or more than eight years; and
- Restitution for damages caused to the federal, local, or municipal Treasury, or the assets of public entities.

Penalties that may be imposed on private companies for such acts may include one or more of the following:

- A fine of up to two times the benefit obtained or, if none, the equivalent of 1,000 to 1,500,000 times the daily value of the Unit of Measure and Update (approximately MX\$ 113,235,000.00);
- Temporary debarment from participation in acquisitions, leasing, services, or public works transactions for a period of not less than three months or more than ten years;
- Suspension of business activities for a period of not less than three months or more than three years;

¹ By 2017, the Unit of Measure and Update has a daily value of MX\$75.49.

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- Dissolution, including loss of legal capacity to act as a private company; and
 - Restitution for damages caused to the federal, local, or municipal Public Treasury, or the assets of public entities.

Suspension and dissolution penalties shall only be imposed in situations where the company obtains an economic benefit and its executives, directors, or partners are involved in the misconduct, or where it is determined that the company is regularly used for the purpose of committing “gross” administrative violations of law.

Private companies shall be punished when the “gross” administrative violations of law are carried out by individuals acting on behalf of and for the benefit of the companies.

Voluntary disclosure of misconduct and cooperation with government-led investigations by executives, directors, or partners on behalf of a private corporate entity, as well as compensation paid to those who suffered loss for damages caused by corporate misconduct, will be considered a mitigating factor in imposing penalties.

Individuals engaged in or tied to “gross” administrative violations of law likewise may qualify for reduced penalties if they admit their misconduct. The benefit of such acceptance of responsibility may reduce penalties by as much as 50 to 70 percent. It may also reduce the duration of any debarment period. If the individual secured an economic benefit through his misconduct, the penalty cannot be less than the economic benefit he obtained.

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