
Implementation of legal provisions regarding the National Anti-Corruption System

Yesterday, July 19th, 2017, the “General Law of Administrative Responsibilities,” came into force. This law establishes the administrative responsibilities, obligations, and applicable sanctions for all the acts or omissions in which public officials might incur. This law also establishes administrative offenses related to corruption acts –and its sanctions - in which private parties might incur.

This law is part of the National Anti-Corruption System’s legal framework and establishes severe sanctions to the public officials that incur in these acts or omissions, and to the individuals and corporations that are involved in these offenses.

The competent authorities to enforce the law are:

- Mexican Ministry of Public Affairs (Secretaría de la Función Pública), and its counter parties in the states
- Internal Control Bodies (Órganos Internos de Control)
- Superior Audit of the Federation (Auditoría Superior de la Federación)
- Local auditing entities
- Federal Court of Administrative Justice (Tribunal Federal de Justicia Administrativa)
- States’ Courts of Administrative Justice
- Supreme Court of Justice (Suprema Corte de Justicia de la Nación)
- Federal Judiciary Council (Consejo de la Judicatura Federal)
- States’ superior courts of justice and states’ judiciary councils

The administrative offenses in which public officials can incur are divided in minor and serious offenses.

The serious administrative offenses are:

- Bribery
- Embezzlement
- Deviation of public resources
- Improper use of information
- Abuse of functions/authority
- Acting under conflict of interest
- Influence peddling
- Hidden enrichment/ Failure to disclose conflict of interest
- Improper hiring of public servants
- Concealment
- Obstruction of justice

Individuals and corporations involved in administrative offenses can only be punished if they are related to a serious administrative offense. The conducts for which an individual or corporation can be sanctioned are:

- **Bribery**
Is the promise, offer or delivery of any undue benefit to a public official, directly or through third parties, in exchange for the performance or lack of performance by the public official of any act related to his functions or to the functions of another public official; or in exchange for the abuse of power or influence of the public official, in order to obtain or to maintain a benefit or advantage, regardless of the acceptance of the benefit or the result obtained.
- **Unlawful participation in administrative proceedings**
The individual that carries out acts or omissions to participate in administrative proceedings, notwithstanding that by law or resolution of the competent authority is impeded to do so, commits this offense.
- **Influence peddling**
Is defined as using influence, economic, or political power over any public official to obtain an undue benefit, advantage, or to cause harm to any person, for itself or for a third party, regardless of the acceptance of the benefit or the result obtained.
- **Use of false information**
The individual that uses or presents false or altered documentation or information, or that simulates compliance with requirements or rules established in the public procurements proceedings, to obtain an authorization, benefit, advantage or harm to any person commits this offense.
- **Obstruction of an investigation**
The individual that has information related to any corruption investigation and gives false information, delays his or her delivery of the information, or does not cooperate with the authorities commits this offense.
- **Collusion**
Is performing actions with one or more particular subjects, that lead to or intend an undue benefit or advantage in a public procurement proceeding. Also any agreement between competitors that seeks to obtain an undue benefit or to cause any damage to the Treasury.
- **Misuse of public resources**
Is misusing or diverting public resources, whether they are material, human or financial, when by any circumstance the individual or company manages, receives, administers or has access to those resources.
- **Improper hiring of former public servants**
Private parties cannot hire a former public official during the year after the public official leaves his public office, when this public official has information directly acquired by his employment, position or commission in the public service that directly allows the private party to obtain an undue benefit.

The penalties that may be imposed to individuals and corporations that incur in these offenses are:

Individuals	Private Legal Entities
Fine up to twice the amount of the benefit obtained, or up to USD \$ 566,000 (MXN\$10,956,000.00)	Fine up to twice the amount of the benefit obtained, or up to USD \$ 5,660,000 (MXN \$109,560,000.00)
Temporary debarment to participate in public procurement (acquisitions, leases, services or public works) up to 8 years	Temporary debarment to participate in public procurement (acquisitions, leases, services or public works) up to 10 years
Indemnity for damages, compensatory damages and lost profits caused to the Public Treasury	Indemnity for damages, compensatory damages and lost profits caused to the Public Treasury
	Suspension of activities up to 3 years
	Corporate dissolution

The competent authorities will take in consideration whether companies have implemented measures to prevent corruption acts such as codes of conduct, internal controls, collaboration agreements for self-regulation and the development of an ethical culture and integrity policies within the organization, when imposing sanctions to companies.

In this context, it is essential for the companies to review their internal policies in order to prevent any of these offenses and their sanctions.

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Sincerely,

Von Wobeser & Sierra, S.C.

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