

Anti-Corruption Enforcement in Mexico: Your Integrity Policy Matters

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On July 19, 2017, Mexico's General Law of Administrative Accountability will go into effect. It is the final part of a historic package of far-reaching anti-corruption laws, dubbed the National Anti-Corruption System, that were passed last year. Taken as a whole, the National Anti-Corruption System will have far-flung consequences for those doing business in Mexico or considering doing business in Mexico.

When the General Law of Administrative Accountability goes into effect, it will expand the scope of potential anti-corruption enforcement. Whereas the 2012 Public Contracting Anti-Corruption Law – the law repealed and replaced by the General Law of Administrative Accountability – was limited to the federal procurement space, the new law's prohibitions apply to more conduct and in a wider business context.

First and foremost, the new law broadly defines prohibited "bribery" as: (1) where a private party offers or gives money or another gift to a public official to cause the official to do or refrain from doing any act related to the official's functions; or (2) where a public official, directly or indirectly, solicits or receives for himself or another person, money or another gift in exchange for doing or refraining from doing any act related to the official's functions. In turn, "public official" is broadly defined as any individual that has employment, a position, or a charge of any type in the Mexican government; government majority-owned companies; public trusts; or that handles federal economic resources.

Other notable prohibitions under the new law include: using or attempting to use influence or economic or political power on a public official in order to obtain a benefit or advantage or to damage any person; using false information during an administrative proceeding in order to obtain an authorization, benefit or advantage, or to damage any person; taking joint action with other private parties to obtain a benefit or advantage in a federal, state, or municipal public procurement process; participating in administrative proceedings after being prohibited from doing so due to prior misconduct; misusing public resources (material, human, or financial); and hiring current or former government officials with privileged information for competitive advantage.

The new law applies to public servants and private parties, including both legal entities and individuals. This includes companies in Mexico and those based outside of Mexico, their affiliates, and their officers who do business in Mexico and have direct or indirect contacts with Mexican officials. Further, a legal entity may be liable for offenses committed by its employees or third parties acting on behalf of the entity in order to obtain benefits for the entity.

Penalties for violating the new law can be severe. Individuals and companies face sanctions up to twice the amount of any acquired benefits, compensatory and/or punitive damages, and/or a temporary ban on participating in procurement, leases, services or state-owned projects (e.g., projects with Pemex). Companies further face the brand new penalties of a temporary suspension of operations or dissolution.

However, Mexico's new law also provides that sanctions shall be mitigated by 50-70 percent where a company self-reports past or ongoing misconduct and has implemented and enforced an adequate "Integrity Policy." An "Integrity Policy" is defined to include, at a minimum: (1) a document setting forth the functions and responsibilities of each of the company's areas, the leadership throughout the company, and a clear chain of command; (2) a code of conduct with enforcement protocol; (3) control and audit systems that regularly supervise standards of compliance within the organization; (4) internal whistleblower and reporting systems that allow for appropriate reporting to enforcement authorities and disciplinary procedures for employees acting contrary to company policy or Mexican law; and (5) human resources policies for preventing the hiring of persons that may pose compliance risks to the organization.

Companies doing business or seeking to do business in Mexico should take action to inform themselves of the legal implications of the National Anti-Corruption System. This includes developing, implementing, enforcing and documenting an Integrity Policy that applies many of the risk assessment-based procedures and controls that are the hallmarks of a modern and effective compliance program.