



Mexico's new anti-corruption system, which was signed into law by President Enrique Peña Nieto on July 18, 2016, builds on constitutional reforms passed in May 2015 and is designed to increase oversight of public officials to deter corruption at all levels of the Mexican government.

The laws establish new responsibilities and stricter penalties applicable to public servants and all private parties (domestic and foreign) doing business in Mexico, and for the first time in Mexican legal history, applies to companies and the officers, directors, and employees acting on their behalf. Coupled with [last week's unsealing](#) of U.S. Department of Justice (DOJ) charges against six individuals who pleaded guilty in an aviation bribery scheme—including two Mexican public officials—Mexican government officials and corporate actors appear to be situated squarely within the enforcement cross-hairs of both U.S. and Mexican anti-corruption authorities as 2017 begins. *National Anti-Corruption System* Mexico's new National Anti-Corruption System replaced the

Federal Anti-Corruption Law on Public Procurement and the Federal Law of Administrative Accountability of Public Officials and, as originally proposed via a citizen initiative, would have required all public servants (and their close relatives) to publicly disclose three sources of information seen as instrumental in combating corruption: (1) tax returns, (2) statements of net worth, and (3) declarations of potential conflicts of interest arising from business or family ties. Although the law was ultimately scaled back to exclude the close relatives of public servants and require filing the disclosures only with a new federal anti-corruption body (rather than publicly), the law signals a significant step towards a level of transparency to which Mexican officials have never before been subject. The new General Law of Administrative Accountability (a component of the new National Anti-Corruption System) prohibits various "serious administrative offenses" including: bribery of public officials, collusion in connection with public procurement, influence peddling, wrongful participation in administrative proceedings, forgery or falsification of information, obstruction of justice, embezzlement, misuse of public resources, and improper hiring of former government officials. Individuals convicted of any of the above acts may face sanctions up to twice the amount of any acquired benefits (or if no measurable benefit, around \$600,000); a ban on participation in procurement, leases, services or state-owned projects for between three months and eight years; and compensatory and/or punitive damages. Companies may also face fines up to twice the amount of any benefit realized (or \$6 million if the benefit cannot be measured); a ban on participation in procurement, leases, services or state-owned projects for up to ten years; and compensatory and/or punitive damages; and may also be subject to dissolution or suspension of activities for between three months and three years.

*Ways to Mitigate Sanctions* Similar to the FCPA and other anti-corruption laws in the region, like the Brazilian Clean Companies Act, the new Mexican law provides mechanisms by which both companies and individuals can mitigate their exposure. First, in determining the severity of sanctions for a serious administrative offense, the authorities will consider whether a company has written compliance policies and procedures (e.g., a code of conduct, an anti-bribery policy, an internal audit program, an effective internal reporting system, etc.) in place to combat corruption. An individual who committed, or is committing, a serious administrative offense who takes responsibility and fully and continuously cooperates with authorities may earn a reduction of fifty to seventy percent of the amount of sanctions otherwise imposed (or up to the totality of the sanction when it comes to bans on participation in procurement, leases, services, or state-owned projects). Both the compliance program credit and the "whistleblower" incentive are new concepts in Mexico.

*Conclusion* While establishing new responsibilities for public officials and private parties alike, the National Anti-Corruption System empowers Mexico's Supreme Audit Institution to perform real-time audits of state uses of government funds, and creates a special anti-corruption court and prosecutor. Most of the new provisions became effective immediately upon passage, though the General Law on Administrative Accountability will take effect in July 2017 and various amendments to the Federal Criminal Code and Organic Law of the Attorney General's Office will take effect once the new anti-corruption prosecutor is appointed. As details continue to emerge regarding the DOJ's prosecution of the individuals involved in the scheme to secure aircraft maintenance and repair contracts with government-owned and controlled entities in Mexico, it is yet unclear whether Mexican prosecutors will bring parallel actions against the three Mexican defendants—two of whom admitted to accepting bribes in their official capacities and conspiring to launder the proceeds of the scheme. Moreover, it is not yet known whether U.S. or Mexican authorities will seek charges against the aviation company which employed the four defendants who pleaded guilty to conspiring to violate the FCPA. With the new National Anti-Corruption System still in its infancy, the framework for anti-corruption enforcement in Mexico has been laid. Whether, and how, the new enforcement authority is invoked remains an open question to monitor in 2017.

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