

Mexican Congress Issues Secondary Anticorruption Regulations

On May 27th, 2015 the constitutional reform for combating corruption was published. This reform created the National Anticorruption System (Sistema Nacional Anticorrupción) (SNA) as a coordinating body among the authorities of all the levels of government for the prevention, detection and sanctioning of corrupt acts. Within a year after the publication of the constitutional reform, the Mexican Congress was required to issue the secondary laws regulating the SNA.

On the 15th, 16th and 17th of June 2016, the Congress approved the complementary laws of the National Anticorruption System. The laws approved were sent to President Peña Nieto for his review. If President Peña Nieto does not have any observations, he will sign and publish the laws. Through this reform 3 new laws are created and 4 others are amended.

This reform implies a profound change in the Mexican public order. It establishes the coordination arrangements among all the levels of government in order to prevent, investigate and sanction corrupt acts; it establishes the obligation of private sector actors that contract with the government to present their assets declaration and conflict of interest declaration; it defines crimes related to acts of corruption and establishes a new Anticorruption Enforcement Agency which will be autonomous from the President of the Republic. This Anticorruption Enforcement Agency will investigate crimes related to acts of corruption.

Newly created secondary laws:

1. General National Anticorruption System Act

- This act establishes coordination arrangements among the federal government, states, municipalities and Mexico City councils in order to prevent, investigate and sanction administrative infractions and acts of corruption; and to decree the general basis for the auditing and control of public resources.
- It creates the Coordinating Committee, a body to coordinate the members of the SNA. This Committee will design, promote and evaluate the public policies for combating corruption.

2. General Administrative Liabilities Act (3of3 Act)

- This act distributes responsibilities for determining the obligations, sanctions and administrative liabilities of public officials.
- It obligates public officials and private sector actors that contract with governmental entities to present an assets declaration, a conflict of interest declaration and a tax declaration before the Ministry of Government Affairs of the Federal Executive Branch or the corresponding agencies of the states.
- It determines the sanctions to be applied to private sector actors consisting of fines, temporary disqualification to participate in public services or works, suspension of activities, dissolution of the respective company and indemnity for damages and losses caused to the Public Treasury.
- It defines serious and non-serious infractions committed by public officials.

3. Federal Auditing and Accountability Act

- This act applies to any person or entity that has received, by any instrument, federal public resources or federal contributions.
- It establishes key powers of the Federal Superior Auditor:
 - a. To audit all the public resources granted through contracting, transfers, donations, funds, etc.
 - b. To assert administrative liabilities for serious administrative infractions.
 - c. To denounce before internal control bodies the non-serious administrative infractions.
 - d. To assist the Special Anticorruption Enforcement Agency.

Amendments to existing laws:

1. Organizational Act of the Federal Administrative Justice Court

- This act determines the formation, organization, powers and functions of the Federal Administrative Justice Court.
- It grants to the Federal Administrative Justice Court the power to hear cases of administrative liability of public officials and private sector actors linked to serious infractions filed by the Ministry of Government Affairs.

2. Organizational Act of the Federal Public Administration

- This act grants powers to the Ministry of Government Affairs, including among others:
 - a. To issue rules that regulate internal control instruments and procedures of the Federal Public Administration.
 - b. To oversee compliance with internal control and auditing rules, in collaboration with the authorities of the SNA Coordinating Committee.
 - c. To know and investigate conduct of public officials of the Federal Public Administration that may constitute administrative liability.
 - d. To implement coordination policies that the SNA Coordinating Committee promotes in relation to combating corruption.

3. Organizational Act of the Attorney General's Office of the Republic

- The Special Anticorruption Enforcement Agency is created, part of the Coordinating Committee of the National Anticorruption System.

4. Federal Criminal Code

- The "Crimes for acts of corruption" committed by public officials are established.
- Sanctions are established for private sector actors that, as contractors, holders of concessions to provide a public service of exploitation or use of federally owned assets, generate and use false or altered information with respect to the returns or benefits they obtain and hide that information when legally obligated to deliver it to an authority.
- Private sector actors that commit the crime of "influence pedaling" are sanctioned.



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- The crime of bribery will exist when a private sector actor “gives, promises or delivers any benefit to public officials to ensure they carry out or refrain from carrying out an act related to their functions, job, position or commission.”

To obtain additional information contact our experts:

Diego Sierra, Partner:

+ 52 (55) 5258-1039, dsierra@vwys.com.mx

Pablo Fautsch, Associate:

+ 52 (55) 5258-1027, pfautsch@vwys.com.mx

Sincerely,

Von Wobeser & Sierra, S.C.

Mexico City, June 24th, 2016.