



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Mexico: Bribery & Corruption (2nd edition)

This country-specific Q&A provides an overview to cartels laws and regulations that may occur in Mexico.

This Q&A is part of the global guide to Bribery & Corruption. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/bribery-and-corruption-second-edition/>

gonzalez calvillo
meet new standards

Country Author: González Calvillo, SC

The Legal 500



**Miguel Valle Salinas,
Partner**

mvalle@gcsc.com.mx

The Legal 500



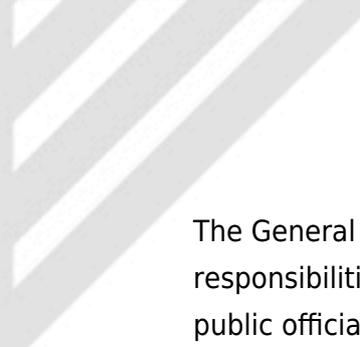
**Fernando González
González, Senior Associate**

fgonzalez@gcsc.com.mx

1. **What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?**

The Political Constitution of the United Mexican States (“**CPEUM**”) sets forth the general basis under which the National Anticorruption System (“**SNA**”) shall operate, its purpose, integration and standards.

The recently enacted General Law on the National Anticorruption System (2016) establishes the principles for the coordination between all relevant anticorruption enforcement entities, whether federal, state or municipal.



The General Law on Administrative Liabilities (“**LGRA**”) sets forth the duties and responsibilities of public officials and determines applicable penalties and sanctions to public officials, individuals and corporate entities for certain illegal conducts.

The Organic Law of the Federal Court of Administrative Justice grants authority to the Federal Court of Administrative Justice to impose penalties to public officials, individuals and corporate entities involved in bribery and corruption conducts.

The Organic Law of the Federal Public Administration grants authority to the Ministry of Public Administration to act, prosecute and impose sanctions related with anticorruption matters.

The General Law of the Attorney General’s Office provides the creation of the Specialized Anti-Corruption Prosecutor’s Office, as an independent body in charge of investigating and prosecuting corruption acts.

The Federal Criminal Code (“**CPF**”), defines the typology of certain criminal offences related with corruption, such as bribery, traffic of influence, embezzlement, illicit enrichment and their applicable criminal consequences.

The Audit and Accountability of the Federation Law governs the authority and powers of the Supreme Federation Audit Office, which is a specialized body dependent of the Chamber of Deputies, which has technical autonomy to audit and oversee the use of public resources by governmental entities.

The Federal Law for the Prevention and Identification of Transactions with Resources of illegal Origin (better known as the “anti-money laundering law”), sets forth the general basis and procedures to identify and prevent activities and transactions involving illegal resources.

In addition to the foregoing, there are certain documents that outline the constitutional principles under which public officials must perform their duties, such as: (i) the Code of Ethics of the Federal Public Officials; (ii) the Integrity Rules of the Public Service; and (iii) the General Guidelines to foster the integrity of public officials and to implement

permanent actions encouraging their ethical behavior, through the Committees for Ethics and Prevention of Conflict of Interest.

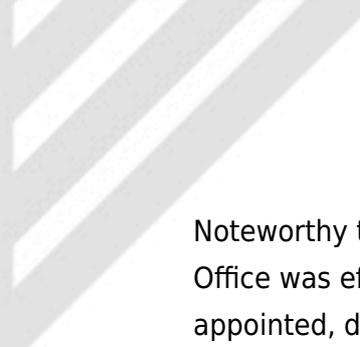
From a non-legal perspective, there have been some efforts carried out by the private sector to design and deliver anti-corruption guidelines for companies. As a result, reputable and leading business organizations such as the Business Coordinating Council (*Consejo Coordinador Empresarial*), have issued the Corporate Integrity and Ethics Code, a non-binding code which has been welcomed by the business community in Mexico.

2. **Which authorities have jurisdiction to investigate and prosecute bribery in your jurisdiction?**

From an administrative legal standpoint, the authorities in charge of investigating bribery cases are the Ministry of Public Administration or the applicable State/local bodies, the Internal Control Bodies, the Supreme Federation Audit's Office, the relevant prosecutor offices of the States and/or the corresponding Units for Liability of the State Productive Companies.

In case of minor administrative offences, the sanctioning authorities are the Ministry of Public Administration or the applicable State bodies, the Internal Control Bodies, and/or the corresponding Unit for Liability of the State Productive Companies; whereas for those cases involving serious administrative offences or private conducts related thereto, the sanctioning authority shall be the Federal Court of Administrative Justice or the applicable body in each State.

Notwithstanding the foregoing, from a criminal stand point, the authority in charge of investigating bribery will be the Specialized Anti-Corruption Prosecutor Office, once the head of such entity is appointed; until then, the authority in charge of investigating bribery is the public prosecutor (*Ministerio Público*) ("**MP**"). The authority in charge of sanctioning such conducts is the judicial authority through a Judicial Court (*Tribunal de Enjuiciamiento*).



Noteworthy to mention, even though the creation of the Anti-Corruption Prosecutor Office was effective on 2015, as of this date, the head of such entity has not yet been appointed, due to the lack of agreement within the Senate, which is in charge of overseeing its appointment. This subject has been one of national debate and controversy lately.

3. How is bribery defined?

Bribery is considered both as a serious administrative offence by the LGRA and as a criminal offence by the CPF.

Article 66 of the LGRA defines bribery as the act of promising, offering or giving public officials, directly or through third parties, any benefit outside of their official remuneration, whether money, values, movables or real estate, even by sale at a notoriously lower price according to market, donations, services, employment and other undue benefits for themselves or for their spouses, relatives or for third parties with whom they have professional, labor or business relations, or for partners or companies which the public officials or the aforementioned persons are part of; in exchange for said public officials to perform or refrain from performing an act related to their functions or another public official's functions, or abuse their actual or alleged influence, for the purpose of obtaining or maintaining a benefit or advantage, regardless of the acceptance or receipt of the benefit by the public officials or the actual outcome.

Article 222 of the CPF defines bribery as the act of giving, promising or delivering any benefit to public officials, for them to perform or refrain from performing an act related to their functions, to their employment, position or commission.

4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined?

Are there different definitions for bribery of a public official and bribery of a private person?

As opposed to other jurisdictions, Mexican law only provides specific definitions and typology for bribery of public officials and does not include specific provisions in connection with the bribery of private persons. Notwithstanding the fact that certain illicit conducts -mostly framed as fraud- may fall within the scope of the general concept of “private” bribery, there is no specific provision in Mexican law neither defining nor sanctioning the bribery of private persons.

Public official is defined in the LGRA as such person holding an employment, position or commission in public entities, whether federal or local, in accordance with the provisions of Article 108 of the CPEUM, that is, elected representatives, members of the Federal Judicial Power, officials and employees and, in general, any person who performs a job, position or commission of any nature in the Congress or in the Federal Public Administration, as well as in autonomous governmental organizations.

For purposes of the CPF, public official means any person who performs a job, position or commission of any nature within the Centralized Federal Public Administration or in Mexico City, decentralized bodies or agencies, state companies (or similar organizations and companies), public trusts, state productive companies, autonomous constitutional bodies, legislative power known as Congress of the Union, or in the Federal Judicial Power, or that handles federal economic resources.

5. What are the civil consequences of bribery in your jurisdiction?

Under Mexican Law, consequences of bribery are mainly administrative and criminal, though, the administrative consequences include the payment of civil damages and losses. In essence, the LGRA provides that bribery, as a serious administrative offence, shall be sanctioned as follows:

In case of individuals, other than public officials: **(i)** a fine consisting in up to two times the benefits obtained or, if not obtained, the equivalent of 100 to 150,000 Measurement and Updating Units (“**UMA’s**”) (currently around USD \$427.00 up to USD

\$639,683.00); **(ii)** disbarment/ banning to participate in public acquisitions, leases, services or works, as appropriate, for a period not less than three months and not exceeding eight years; and **(iii)** payment of damages and losses caused to the Federal, local or municipal Public Treasury, or to the estate of the public entities.

In case of legal persons, including business organizations: **(i)** a fine consisting in up to two times the benefits obtained or, if not obtained, the equivalent of 1000 to 1'500,000 UMA's (currently around USD \$4,265.00 up to USD \$6'396,825.00); **(ii)** disbarment/ banning to participate in public acquisitions, leases, services or works, as appropriate, for a period not less than three months and not exceeding ten years; **(iii)** suspension of activities for a period not less than three months and not exceeding three years; **(iv)** be subject to early dissolution; and **(v)** payment of the damages and losses caused to the Federal, local or municipal Public Treasury, or to the estate of the public entities.

In case of public officials: **(i)** suspension of employment, position or commission; **(ii)** dismissal of employment, position or commission; **(iii)** economic penalty to be determined by the competent authority; and **(iv)** temporary disbarment for employment, positions or commissions in the public service and for participating in public acquisitions, leases, services or works.

6. **What are the criminal consequences of bribery in your jurisdiction?**

Pursuant to Articles 222 and 222 BIS of the CPF, the penalties for both the public official or the private person involved in the bribery, as a consequence of the criminal conduct, are:

If the bribe does not exceed an amount equivalent to 500 UMA's (currently around USD \$ 2,132.00), penalties will range from 3 months to 2 years of imprisonment and a fine ranging between 30 and 100 UMA's (currently around USD \$128.00 up to USD \$427.00).

In the event the bribe exceeds an amount equivalent to 500 UMA's, the penalties will

range from 2 to 14 years of imprisonment and a fine of between 100 to 150 UMA's (currently around USD \$427.00 up to USD \$640.00).

7. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials?

There are no specific provisions regarding hospitality, travel and entertainment expenses nor any exception allowing such expenses; therefore, pursuant to Article 66 of the LGRA and Article 222 of the CPF, those concepts would be considered as bribery, to the extent the corresponding conduct meets the requirements to fall within the scope of such criminal offence.

8. Are political contributions regulated?

Yes, political contributions are regulated by Article 41 of the CPEUM and the General Law on Electoral Institutions and Procedures ("**LGIFE**"). In general terms, political parties may obtain private financing (within the thresholds and restrictions set forth in the LGIFE and its regulations), but in no event they may receive donations or contributions in cash, metals or jewellery, from any individual or company.

9. Are facilitation payments regulated? If not, what is the general approach to such payments?

No, as opposed to other jurisdictions and foreign laws (such as FCPA), there are no provisions specifically regulating facilitation payments, nor any exception allowing facilitation payments; therefore, pursuant to Article 66 of the LGRA and Article 222 of the CPF, such payments would be considered as bribery.

10. **Are there any defences available?**

No, under Mexican law there are no defences nor exceptions that excuse or legitimate facilitation payments.

11. **Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction? Please identify any guidance indicating what features a compliance program should have in order to provide an effective defence/mitigation.**

Yes, Article 25 of the LGRA expressly provides that having compliance programs may reduce the corresponding liability of the corporate entities, provided that such programs include, among others: **(i)** organisational manual/handbook clearly describing the functions and responsibilities of their areas and command chains, **(ii)** a code of conduct duly published and available to all members of the entity, **(iii)** adequate and effective control, monitoring and auditing systems in order to verify the compliance with integrity standards, **(iv)** adequate and effective complaint systems, **(v)** training systems and procedures, **(vi)** transparency mechanisms.

Additionally, as a general rule, the fact that corporate entities or business organizations implement or adopt robust internal compliance programs, control mechanisms, policies and guidelines, *inter alia*, may be taken into account by a judge as a merit or an attenuating factor to reduce the penalty or sanction to be imposed for a criminal offence.

Finally, as guidance, the Ministry of Public Service issued the Model of Corporate Integrity Program (*Modelo de Programa de Integridad Empresarial*). This guideline was issued in collaboration with the United Nations Office on Drugs and Crime and the United Nations Development Program. The purpose of this guideline is supporting companies to implement the provisions of article 25 of the LGRA and develop their own compliance programs.

12. **Who may be held liable for bribery? Only individuals, or also corporate entities?**

Pursuant to article 24 of the LGRA, both individuals and corporate entities may be held liable for bribery and other administrative offences, with the applicable penalties and sanctions described in answer to question 5 above.

Pursuant to Article 11 Bis of the CPF and 421 of the National Code on Criminal Procedures (“**CNPP**”), both individuals and corporate entities may be held criminally liable for performing acts of corruption, including bribery and, therefore, punished for offences committed on their behalf, for their benefit or through the means they provide.

13. **Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective corporate compliance program?**

The Mexican government has not published specific guidelines regarding compliance with anticorruption laws. However, Article 25 of the LGRA (described in answer to question 11 above) states that when determining liability of legal persons (companies), having in place an integrity policy shall be considered. Said Article outlines the main elements that an integrity policy shall contain, such as: (i) manuals of organization and procedures; (ii) a code of conduct which is duly made available between all members of the organization; (iii) adequate and effective control, audit and surveillance systems; (iv) adequate denouncing and reporting systems, both within the company and towards the authority, including disciplinary processes and concrete sanctions; and (v) adequate training systems; among others. Please refer to our answer to question 11 for further information in connection with guidance issued by the government for compliance with the foregoing article 25 of the LGRA.

14. **Does the law provide protection to whistle-blowers?**

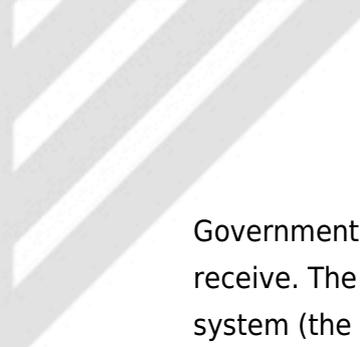
Yes, Article 64 of the LGRA provides that a public official that reports a corruption act by another public official or a private person, or that acts as witness in the corresponding trial, is entitled to and may request reasonable protection measures.

Also, Article 219 of the CPF provides that a crime of intimidation is committed when a public officer, or a person acting on their behalf, uses physical violence or moral aggression to intimidate another person in order to prevent them from reporting or filing a criminal complaint, or from providing information concerning the alleged criminal act or a conduct sanctioned by administrative laws. Such crime is also committed by the public officer that carries out an illicit act or omits carrying out a licit one, that injures the interests of the person that filed the corresponding report or complaint, or of a third party with whom such person has a family, business or affection tie.

Additionally, Article 367 of the CNPP provides that the relevant judicial authority (whether a judge or a court) or the MP may order special measures to protect the physical and mental integrity of witnesses and their family.

Finally, Article 15 c) of the Federal Law on the Protection of Persons Involved in a Criminal Procedure provides certain measures and procedures guaranteeing the protection and attention of individuals involved or cooperating in criminal proceedings, whenever they are in a risky or dangerous situation due to their participation in the proceedings or as a result thereof. Such measures may consist in: (i) assistance, which will have the purpose of accompanying the witnesses (ensuring the relevant witness no damage or aggravation to his personal or patrimonial situation); or (ii) security, with the purpose of providing the necessary conditions to preserve the life, liberty and/or physical integrity of the witness.

15. **How common are government authority investigations into allegations of bribery?**



Government prosecuting bodies are obliged to investigate all bribery allegations they receive. The Federal Government has implemented a specific complaint and report system (the Integral System for Citizen Claims and Reports) by means of which any person that has been involved in, has suffered, or has knowledge of a bribery act at a federal level, may file a complaint before the competent authority; all the claims filed through said system must be investigated. According to data gathered by the National Institute of Statistics and Geography (INEGI) as of 2014, 10,047 public officials were sanctioned by Internal Control Bodies; 2,993 were charged with bribery sanctions; 406 public officials were sentenced (whether in an absolutive or condemnatory sense); and only 81 were imprisoned for such criminal offences.

16. **What are the recent trends in investigations and enforcement in your jurisdiction?**

Mexico has deep corruption problems; it ranked 138 (out of 180, where 1 is the less corrupt and 180 is the most corrupt) in the Corruption Perceptions Index 2018 issued by Transparency International. Hence, the fight against corruption is a daily topic in the spotlight of national media, political parties and civil organizations. By these means, such fight against corruption is one of the main subjects that new President Andrés Manuel López Obrador (“AMLO”), who took office last December 1st, 2018, has adopted as flagship, though, no major prosecution processes have been started, other than messages distributed through media referring to potential prosecution actions against allegedly corrupt offices from previous administration.

The implementation of the SNA has been a huge step towards mitigating corruption, at least, compared to the former system and elements that the government had for such purpose, although criticized by the insufficient autonomy of its organs.

In light with the above, there is still no clear nor defined strategy from the Federal Government to tackle bribery and corruption and to take enforcement actions.

One of the actions that have indeed been carried out is the strategy initiated by the Federal Government to stop and prosecute the robbery and illegal commercialization of hydrocarbons, which is one of the main activities performed by organized crime in

Mexico. Allegedly, the coordinated and systematic commission of such crime originated from corrupt schemes implemented by PEMEX' (the state-owned entity in charge of production and commercialization of hydrocarbons) officers. As informed by the Federal Government, a number of those officers are under investigation and subject to judicial process.

From a private sector perspective, the -every day increasing- actions taken by foreign authorities to implement anticorruption measures and to sanction corrupt conducts of corporations overseas, as well as worldwide known corruption scandals altogether, have raised the awareness of business organizations towards the implementation of robust compliance programs and investment in the setting up of full compliance departments, including full adoption of policies to comply with the U.S. Foreign Corrupt Practices Act, and, in a less common fashion, with the United Kingdom Bribery Act.

17. Is there a process of judicial review for challenging government authority action and decisions?

Yes, from an administrative perspective, Articles 210 and 211 of the LGRA provide that public officials who are held liable for the commission of non-serious administrative offence, may file an appeal for revocation with the authority that issued the resolution.

The judgement rendered in the appeal for revocation may be challenged by means of action for nullity before the Federal Court of Justice for Tax and Administrative Matters.

Finally, the judgement rendered in the nullity trial may be appealed by an *amparo* lawsuit (constitutional relief). The *amparo* action, regulated by Articles 103 and 107 of the CPEUM, as well as by the Amparo Law, is the constitutional method of control for acts committed in the exercise of governmental power, mainly aiming at protecting individuals' human and fundamental rights. The *amparo* action is the main defense mechanism available to the individuals for challenging governmental acts.

18. **Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?**

Earlier this year, the Mexican Congress amended the CPEUM in order to include corruption offences as a major crime, with preventive custody and no right to bail. Such amendment to the CPEUM was one of AMLO's promises in his government's inauguration ceremony.

Other than the foregoing, there are no planned major reforms to the Mexican anti-corruption laws. However, the local governments are in the process, and are obliged to implement and enact equivalent local regulation to be consistent with the relevant SNA regulatory framework.

Additionally, according to information recently released by official sources, the federal government is preparing an Anti-Bribery Protocol, which has the purpose of coordinating the participation of all federal government entities involved in the prevention, detection, investigation and sanction of transnational bribery. Such initiative is part of Mexico's efforts to comply with the provisions of the OECD Anti-Bribery Convention and will target the solution of jurisdiction and extraterritoriality problems, the administrative and criminal liability of legal persons, the exchange of information between authorities and the improvement of the Mexican government's mechanisms for international cooperation.

19. **To which international anti-corruption conventions is your country party?**

Mexico is a party to the following international anti-corruption conventions:

(i) the OAS Inter-American Convention Against Corruption;

(ii) the OECD Anti-Bribery Convention, officially the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and

(iii) the United Nations Convention against Corruption.

20. **Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection.**

The general concept of professional secrecy is not lawyer-specific but is applicable to the practice of law. This concept is regulated under several laws; the CPEUM provides for the protection of private communications and establishes that acts against the privacy and freedom of such shall be sanctioned under criminal laws; Article 36 of the General Professions Law for Mexico City, which regulates Article 5 of the CPEUM, provides that professionals shall keep strict secrecy on matters disclosed to them by their clients.

Regulations for criminal and civil procedures contain provisions stating that persons that receive information by means of their job, position or profession, bound to professional secrecy, are not obliged to testify against their clients.

Pursuant to Article 140 of the LGRA, any person is obliged to assist the authorities within the investigation and resolution of cases involving administrative offences of corruption, except for relatives, spouses and those who have the obligation to maintain professional secrecy.

21. **How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and corruption compares on an international scale?**

From an official perspective, tackling bribery and corruption is allegedly a priority item for AMLO's administration.

However, austerity, another priority item of the government, has negatively impacted the efforts against bribery and corruption due to a budget cut affecting the seven entities of the SNA. This budget cut resulted in resources allocated to such SNA entities of 0.5% to 27.2% in comparison to the 2018 budget.

The enactment and implementation of the SNA has been one of the main efforts and challenges of the current federal administration. Though, the results are yet to be seen. At this moment, even though Mexico is a party to main anti-corruption conventions and therefore, its approach seems to be similar to that one of top economies and least corrupt countries, the implementation of specialized laws has been slow. Furthermore, even if implemented, the enforcement of those laws and the avoidance of conflict of interest between the federal government and prosecuting agencies remains as an area of opportunity for improvement. There is intense pressure exercised by academic institutions, NGOs, international observatories and international organizations, for the Mexican government to successfully develop and enforce anti-corruption policies and legislation. Despite all efforts and the deployment and implementation of the SNA, Mexico's comparison in international scale is not favourable; as mentioned above, it ranked 138 out of 180 with a score of 28/100, according to the Corruption Perceptions Index 2018 issued by Transparency International, with only four Latin American nations ranked lower. As per the foregoing, Mexico is the worst ranked country among OECD and the G20 members.

22. **Generally how serious are organisations in your country about preventing bribery and corruption?**

Government organisations are giving a paramount importance to the subject; however, hitherto, results and implementation has not been successful. From a private organisation perspective, there is a serious approach to the prevention of corruption. Several recognized academic institutions, NGO's, observatories and business organizations (such as *Transparencia Mexicana*, *Mexicanos Contra la Corrupción*, *Instituto Mexicano para la Competitividad*, *Mexicanos Primero*, *Ciudadanos por la Transparencia*, *COPARMEX*, *Consejo Coordinador Empresarial*) have played a lead role in achieving latest milestones on anti-corruption polices development, including the LGRA, which was originally conceived from a citizen initiative drafted by a group of

NGO's, known as the "*Ley 3 de 3*" which demanded public officers to disclose their assets and income.

23. **What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?**

The hurdles and barriers related with gathering sufficient evidence to build strong and successful cases; in Mexico, most of the cases that are dismissed or not prosecuted by the MP are due to loopholes and formality mistakes during prosecution procedures.

In addition to the foregoing, the biggest challenge is to overcome the elevated levels of corruption within the prosecuting and judicial authorities, as well as the lack of protection of the prosecutor and judicial authorities against political retaliation.

24. **What do you consider will be the most significant corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?**

The new federal administration has defined three priority strategies; one of them being tackling corruption and bribery. However, it is still early to see tangible results from the "zero-tolerance" principle adopted by AMLO's government.

With no doubt, a major positive development would be fully implementing the SNA. Hopefully, pending appointments of senior officers will occur within the next few months, including the official appointment of the head of the system, the independent special anti-corruption prosecutor.

We consider that Mexico is still going through a transition period between governments and political ideologies, which creates an uncertainty atmosphere that represents a challenge for companies looking to anticipate to the economic, social and legal



developments to take place in Mexico in the near future.

25. **How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?**

We consider that the recent creation of the SNA is indeed a step forward towards fighting corruption. However, its success depends on the real implementation of independent investigating and sanctioning bodies, which are not colluded or politically affiliated with government officials. In our opinion, regulatory measures aiming at providing full independence, resources and protection to investigating and sanctioning bodies, as well as the actual implementation and execution of exemplary and strong sanctions would represent a significant improvement which may derive in a positive impact against corruption.