

Mexico

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1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

Mexico is signatory, and has ratified, three international conventions related to anti-corruption:

- the Organization of American States (OAS);
- the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD); and
- the United Nations Convention against Corruption (UN).

2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

The Federal Criminal Code (FCC) provides for the bribery of public officials (domestic) and foreign public officials. The law will sanction to those who offer, promise or give any kind of gift to any foreign public official.

In July 2017, the new National Anticorruption System came into effect, aiming to tackle corruption at the three government levels (municipal, state and federation). The General Law of Administrative Responsibilities (GLAR) includes both corruption and bribery as serious offences.

The GLAR imposes sanctions on individuals, corporations and public officials for serious offences. The GLAR also comprises a long list of conducts such as bribery, collusion, influence peddling, among other serious offences and also provides a procedure to investigate and sanction companies or individuals. Sanctions include fines of up to two times the amount obtained or up to the equivalent of US\$6 million.

The sanctions provided by the GLAR are of an administrative and economical nature, such as temporary disqualification, suspension, dissolution, payment of damages and fines equal to the amount of estimated profits; while on the other hand, the FCC imposes fines and imprisonment.

Foreign bribery

3 Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

Pursuant to the FCC, foreign bribery is a crime that will be sanctioned with the same fines and prison time as provided for (local) bribery, to those whom, with the purpose of obtaining or retaining for himself or a third party, illegal advantages in the carrying out or conducting of international business transactions, offers, promises or gives, whether by himself or through a third party, money or any other advantage, whether in goods or services to:

- a foreign public official in order that he or she negotiates or refrains from negotiating the carrying out or the resolution of issues related to the functions inherent to his or her job, post or commission;
- a foreign public official in order to perform or issue a resolution of any issue that is beyond the scope of the inherent functions to his or her job, post or commission; or

- any person in order for him or her to go before a foreign public official and require or propose to perform carrying out or the resolution of any issue related to the inherent functions of his or her job, post or commission.

4 Definition of a foreign public official

How does your law define a foreign public official?

Pursuant to the FCC, a foreign public official is any individual who performs a job, duty or commission in any level of a foreign government, either by appointment or public election; any individual in performance of a duty for any authority or organism of a public company; and any official or agent of an international organisation.

The OECD Anti-Bribery Convention (officially Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) establishes that any individual holding a position in the legislative, administrative or judicial powers in a foreign country, including a public agency or company, or any official or agent of a public organisation is considered a foreign public official.

5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

The GLAR is applicable to matters related to international commercial transactions; it prohibits any kind of gifts, travel expenses, meals or entertainment to be paid to a public official.

6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

No, the GLAR and the FCC prohibit any kind of payment made to a public official.

7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

Any payment made through intermediaries or third parties to public officials is considered a criminal offence by the FCC, with no exception or distinction.

8 Individual and corporate liability

Can both individuals and companies be held liable for bribery of a foreign official?

Yes. Due to recent reforms in criminal matters, in Mexico, an entity can be prosecuted and subject to cautionary measures; bribery and foreign bribery are included.

Pursuant to the FCC, crimes committed abroad, with effects in Mexico, will be investigated in Mexico. Crimes committed abroad by a Mexican national against a Mexican national will be prosecuted in Mexico when reported in Mexico if there is no sentence in the country

where the alleged crime has been committed and if the crime is also a crime in said other jurisdiction.

9 Successor liability

Can a successor entity be held liable for bribery of foreign officials by the target entity that occurred prior to the merger or acquisition?

Yes, the GLAR and the FCC provide that those who commit acts of corruption or bribery will be punished without specifically mentioning a probable amnesty or acquittal regarding a merger, abortion of the corporation or acquisition between business.

In fact, the National Code on Criminal Procedures (NCCP) provides that the criminal liability of the company will not be extinguished by virtue of a merger or spinoff.

According to GLAR, collusion (which, according to the doctrine, could serve as an act of corruption) is understood as one or more individuals acting in matters of public procurement, taking actions with the purpose or effect of obtaining an unlawful advantage, agreeing upon or entering into agreements, partnering up with competitors targeting unlawful benefits or to cause any damage to public finances; such crime is applicable to international commercial transactions.

Legal proceedings against this crime shall be investigated within seven years of its commission; however, investigations on bribery to foreign public servants is limited to a three-year term. In the case of money laundering investigations related to bribery or tax fraud, the administrative investigation may date back 10 years.

10 Civil and criminal enforcement

Is there civil and criminal enforcement of your country's foreign bribery laws?

In Mexican legislation there are two types of enforcement actions, the criminal and the administrative. The administrative actions resemble the civil Anglo-Saxon system.

11 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

According to the General Law of the National Anticorruption System, the authorities who should enforce foreign bribery by the Coordinating Committee itself will be responsible for coordinating all the members of the National Anticorruption System and will be responsible for the design, promotion and evaluation of public policies to combat corruption. The aforementioned Committee is composed of the following authorities:

- the head of the Superior Audit of the Federation;
- the head of the Specialised Prosecutor's Office to Combat Corruption;
- the head of the Ministry of Public Administration;
- a representative of the Federal Judicial Council;
- the President of the National Institute of Transparency, Access to Information and Protection of Personal Data; and
- the Chief Justice of the Federal Court of Administrative Justice.

Likewise, they will be the authorities responsible for combating corruption, the Internal Control Organs (internal affairs) of each of the entities and, if applicable, the Units of Responsibilities of the entities known as State Productive Enterprises.

Additionally, on current criminal issues, these correspond to the Public Prosecutor's Office (Attorney General) until the Specialised Prosecutor's Office in matters of crimes related to acts of corruption takes office.

12 Leniency

Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

Yes. The GLAR provides a benefit for those who confess their responsibility for the commission of an act of corruption. This confession will have the effect of a reduction of between 50 and 70 per cent of the amount of sanctions that in their case are imposed, and even a total

reduction of the sanction in the case of temporary disqualifications to participate in acquisitions, leases, services or public works.

The procedure to carry out the above-mentioned, is as follows:

- the confession must be made prior to any notification of the beginning of the administrative liability procedure;
- that the person who intends to benefit is one of the subjects involved in carrying out the act classified as corruption and that this is the first to provide elements of conviction and that in the opinion of the authorities allow to verify the existence of the infraction and the responsibility of who committed it;
- that the person who intends to benefit cooperates fully and continuously with the competent authority that conducts the investigation and, where appropriate, with which substantiates and resolves the administrative liability procedure; and
- that the person interested in obtaining the benefit has ended his or her participation in the wrongdoing, at the moment when the authority requests it.

The NCCP provides for the application of opportunity criteria, which will operate at the discretion of the Public Prosecutor's Office and in accordance with the provisions of each of the State Attorney's Offices. Said criteria of opportunity have the effect, in this case, of the extinction of the enforcement action.

The criterion of opportunity may be applied by the authority when the defendants provide essential information for the prosecution of a crime more serious than the one allegedly credited to them and that they must provide information that leads to the detention of those charged with the crime and that they also take part in the corresponding trial.

13 Dispute resolution

Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

Formally speaking and under due process, the initiation of an enforcement administrative procedure should be formally notified (by subpoena) and taken to its last possible procedural stage, which is an administrative resolution. However, under the NCCP and in certain types of cases, a conditional suspension (once due process has been instated) of the criminal trial is applicable; the criminal investigative and trial process might be solved via a damage repair. Also, commuting the penalty is possible.

Pursuant to the National Law on Alternative Dispute Resolution Mechanisms in Criminal Matters, violations of criminal legislation, such as bribery, may not be subject to alternative dispute resolution mechanisms.

14 Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

By means of decree dated 18 July 2016, the secondary provisions (laws and regulations) of the National Anticorruption System were published, including the Law of the National Anticorruption System, the GLAR and the Organic Law of the Administrative Justice Courts.

The above-mentioned laws were created to support the function of the National Anticorruption System.

Likewise, the abovementioned provisions establish a listing of serious offences that may be committed by public officials, such as passive bribery, bribery, foreign bribery, among others. The mentioned misdemeanors shall be sanctioned according to the provisions of the GLAR.

Additionally, President Andrés Manuel López Obrador (during his presidential campaign) constantly and repeatedly mentioned that his government will tackle corruption in an efficient way. Although there have not been any relevant changes in the anticorruption provisions, several actions have been initiated since the first days of the López Obrador government. Some notable measures include formal accusations filed before the Ministry of Finance, the Financial Intelligence Unit and the attorney general's office, targeting entities and individuals for money laundering, bribery, theft of national assets (ie, car fuel and gas) and fake invoicing organised crime activity in prejudice of the financial system and the rule of law.

15 Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery?

Foreign companies' subsidiaries and individuals in Mexico will be investigated first; should the company get any benefit from said individual by pursuant to the FCC and NPC, criminal liability criteria may come into effect.

In January 2019, local newspapers reported an international bank with a local subsidiary to be subject for criminal prosecution, this being one of the first cases of a bank being brought to criminal procedure for potential fraud. Although this is a potential fraud case, this case might lead the way for more corporate prosecutions in the near future. So far, no cases have been reported by the attorney general's office.

For a case involving bribery activity, the prosecutor must show that the corporation acted with the purpose of obtaining or retaining for themselves or for other persons, unlawful advantages on international commercial transactions: to offer, promise or give, by him or herself or by an intermediary person, money or any other gift, whether in goods or services to a foreign public official and requires or proposes to issue a resolution of any matter related to the functions inherent in employment, charge or commission of the public official.

16 Sanctions

What are the sanctions for individuals and companies violating the foreign bribery rules?

The National Criminal Procedures Code states that corporations may be criminally liable for crimes committed on their behalf, for their benefit or through the means provided by them.

Also, the FCC defines bribery to foreign public servants as a crime, which translates into a private individual, with the purpose of obtaining or retaining for himself or for a third-party advantage in the development or conduct of international commercial transactions, offer, promise or give, by itself or through an intermediary person, money or any other gift to a foreign public official.

Likewise, the authorities may order as cautionary measures the suspension of activities, the temporary closure of the establishment or judicial intervention.

The sanctions for the person who commits the crime of bribery to foreign public servants will be: when the value of the gift, property or pledge does not exceed 40,300 Mexican pesos, will be imposed from two to 14 years of prison and from 8,060 Mexican pesos to 12,090 Mexican pesos.

Also, cautionary measures may be imposed including: temporary suspension from public procurement biddings, intervention of the business, prohibition to carry out certain activities, among others.

Criminal liability can be imposed on a corporation when the crime is committed by its legal representative without having proper internal controls or also called a 'defect in the organisation' criterion or when their subordinates commit criminal acts without proper oversight of the organisational level and for the profit and benefit of the company. The sanctions may include: economic fines, prohibition to carry out their activities, suspension or dissolution and debarment from public procurement.

17 Recent decisions and investigations

Identify and summarise recent landmark decisions or investigations involving foreign bribery.

In 2016, the US Department of Justice disclosed documents regarding the possible payment of bribes by the Brazilian construction company Odebrecht to government officers from at least 12 different countries, including Mexico, Venezuela and Argentina.

Allegedly, between 2010 and 2014 Odebrecht paid several bribes to public officers in a total estimated amount of US\$10.5 million, in exchange for the direct assignment of construction agreements. Odebrecht's officers prosecuted in Brazil stated that, allegedly, in 2013 a bribe was paid to the former CEO of Pemex. Additionally, reports and media state that Odebrecht financed part of a past Presidential campaign.

Notwithstanding the aforementioned, the Mexican Attorney General Office has not formally prosecuted any public officer. The only

sanction was a temporary suspension to the company to take part in any public procurement agreement.

Financial record keeping

18 Laws and regulations

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

According to several provisions of the Commercial Code and the General Law of Commercial Companies, the companies are obliged to carry out their records in four books: partners' or shareholders' registry book, stock capital variations book, minutes of the shareholders' or partners' meetings book and minutes of the board of managers' or directors' meetings book, additional to the accounting books. All corporate records must be kept if the company exists.

Pursuant to the provisions of the General Law of Commercial Companies, the companies must deliver a report before their shareholders' or partners' meeting related to the financial information of the company per each year of operation. Additionally, tax provisions may oblige companies to audit their financial statements by an external auditor; this obligation may be triggered by annual income thresholds.

Books and records keeping is also a tax obligation provided by the Federal Tax Code. Expenses and authorised deductions must be duly registered in accounting records and financial statements of the corporations and individuals with commercial activity. Bribery, including facilitation payments is not an authorised deduction or expense that can be treated as strictly necessary and is a direct violation to administrative and criminal laws; therefore prohibited. Accounting activity must follow international best practices and international financial rules under a general and transparency principle that duly exposes the operations carried out by the companies.

19 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

In terms of the GLAR, there is no formal obligation to disclose violations in anti-corruption matters; nevertheless, leniency does exist for those self-disclosing. However, the NCCP provides the obligation to report for any civil society member, any act that may constitute a crime. This last provision does not have a direct sanction for not reporting.

20 Prosecution under financial record-keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

Yes, they should. The GLAR and the FCC provide regulation regarding the prosecution of the act of corruption committed in national territory or abroad; nevertheless, little activity has been reported.

21 Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

Bribes are not legal and accounting rules apply with no specific consideration towards this wrongdoing. Tax obligations and accounting rules are formal, and provide for illegal activity to be registered. Accounting rules make it mandatory for accountants and tax auditors to reveal bribing activity.

Tax evasion and simulation are crimes regulated by tax laws. The corresponding sanctions for the above-mentioned crimes may range from fines to imprisonment.

22 Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

No. The Mexican tax provisions, especially those regarding income tax, do not provide nor specifically allow only the deductibility of expenses related to bribes. Deduction is strictly related and reserved for strictly necessary ordinary expenses in due course of business.

Update and trends

Mexico is passing through quite an interesting political time, where potentially the new political-administrative apparatus will suffer important reforms that might impact on the fight against corruption and specific legislation. President Lopez Obrador promised to combat and eradicate corruption in Mexico.

In his first month of office, he suspended (partially) car fuel supply to begin a war against the illegal sale of fuel by organised crime. Among other measures, the Financial Intelligence Unit froze several accounts related to corruption and this illegal typology. The government has reported hundreds of potential cases to be under investigation, mostly related to bribing activity and collusion of corporations and public officials.

The GLAR provides an obligation for public officials to disclose information regarding their assets and real estate, their business relations (to prevent the performance of their duty being affected by any relation), and their tax returns.

The National Anti-Corruption System is integrated, among other entities, by the Civilian Participation Committee. The main duty of said Committee is to act as a link between civilian organisations and the authorities.

Another trend is the corruption found in investigations related to corporations using fake invoices and illegal tax systems to aid and add to their deductions simulating justified expenses. According to authorities and newspapers, corporations have been simulating tax deductions by using illegal invoices from organised crime. This typology is under investigation and hundreds of banking accounts have been closed by the authorities.

Domestic bribery

23 Legal framework

Describe the individual elements of the law prohibiting bribery of a domestic public official.

According to the GLAR, any individual will incur in bribery when offering or delivering any unlawful benefit to a public servant, directly or through third parties in exchange for the public servant performing or refrain from performing an act related to its functions or those of another public servant, or abusing its real or alleged influence for the purpose of obtaining or maintaining, for itself or for a third party, a benefit or advantage, regardless of the acceptance or receipt of the benefit or result obtained.

The sanctions that will be imposed on companies that incur in bribery will be economic sanctions, disqualification from participating in acquisitions, leases, services or public works, suspension of activities, compensation for damages caused to the Federal Treasury and, where appropriate, the dissolution of society.

However, in accordance with the provisions of criminal law, the crime of bribery will be committed by anyone who gives, promises or delivers any benefit to a public servant. Pursuant to the FCC, a public official per se or via a third party, who requests or receives for his or her benefit or a third party money or any gift, or accepts a pledge to do or to refrain from doing something, whether it is just our unjust related to his functions will commit the crime of bribery.

Sanctions for those who incur the crime of bribery will be imprisonment and economic sanctions.

24 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

Yes. The GLAR and the FCC prohibit private entities and individual from offering or giving bribes, and also prohibit public officials from receiving bribes.

25 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

For purposes of foreign bribery crime, a public official is understood as any person who holds or appears to hold a public office according to 'applicable law'.

More specifically, article 108 of the Political Constitution of the United Mexican States defines the following as public officers:

- public election representatives;
- members of the Federal Judicial Authorities;
- employees and officers of the Legislative Organs;
- employees and officers of the entities of the Federal Administration; and
- employees and officers of the Autonomous Constitutional Organs.

26 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

Yes. A public official may take part and carry out commercial activities, provided there is no conflict of interests between the public duty and the commercial activities of the public official. Conflict of interests is defined as a possible material affectation of the performance of the duties of the public official by means of personal, familiar or business interests.

27 Travel and entertainment

Describe any restrictions on providing domestic officials with travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

There are no provisions specifically pursuant to travel and entertainment; nevertheless, according to the provisions of the GLAR, individuals or companies shall not promise, offer or deliver any kind of additional benefit to any public official, including the payments of travel expenses, meals or entertainment. 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.

28 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

Pursuant to the GLAR, any kind of gift shall not be granted in favour of any public official. Prior to the NAS, it was possible for public officials to receive gifts of small value. Said gifts shall not exceed the amount of 10 Measurement and Updating Units (UMAs) at the moment of the delivery, and the public official shall deliver a notice regarding said received gift.

29 Private commercial bribery

Does your country also prohibit private commercial bribery?

No. Commercial bribery is not regulated in Mexico, nevertheless, the GLAR provides the collusion crime, which consists of an agreement between individuals for the celebration of any type of contract, whose objective is to obtain an undue benefit or cause damage to public finances. Likewise, it is considered collusion to execute with one or more individuals, in matters of public procurement, actions that imply or have the purpose of obtaining an undue benefit or advantage in public procurement of a municipal, local or federal nature.

30 Penalties and enforcement**What are the sanctions for individuals and companies violating the domestic bribery rules?**

Under Mexican Law, there are no per se civil consequences of bribery, rather, consequences are administrative and criminal; the GLAR sets forth that bribery, as a serious administrative offence, shall be sanctioned as follows outlined below.

In cases of individuals:

- a fine consisting of up to two times the benefits obtained or, if not obtained, the equivalent of 100 to 150,000 UMAs (currently around US\$427 up to US\$639,683);
- disbarment or banning from participating in public acquisitions, leasing, rendering services or works, as appropriate, for a period not less than three months and not exceeding eight years; and
- 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 corporations, including business organisations:

- a fine consisting of up to two times the benefits obtained or, if not obtained, the equivalent of 1,000 to 1.5 million UMAs (currently around US\$4,265 up to US\$6,396,825);
- disbarment or banning from participating in public acquisitions, leases, services or works, as appropriate, for a period not less than three months and not exceeding 10 years;
- suspension of activities for a period not less than three months and not exceeding three years;
- being subject to early dissolution; and
- payment of the damages and losses caused to the federal, local or municipal public treasury, or to the estate of the public entities.

In cases of public officials:

- suspension of employment, position or commission;
- dismissal of employment, position or commission;

- economic penalty to be determined by the competent authority; and
- temporary disbarment from employment, positions or commissions in the public service and for participating in public acquisitions, leases, services or works.

31 Facilitating payments**Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?**

No. There are no provisions specifically regulating facilitation payments, nor any exception allowing facilitation payments; therefore, pursuant to article 66 of the GLAR and article 222 of the FCC, such payments would be considered as bribery.

32 Recent decisions and investigations**Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.****Pemex-Lozaya**

An investigation for the possible commission of bribery-related crimes was because of political payments made by Odebrecht to Lozoya, who was later appointed as CEO of Pemex, and later Pemex granted several public agreements to Odebrecht.

Key Energy Services

Pemex officers are being prosecuted because of the possible commission of bribery related crimes, because of the possible payment of bribes in the amount of 9 million Mexican pesos in exchange for information of future public bindings and to obtain the extension of the ongoing Pemex agreement granted in favour of Key Energy Services.

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