

**Bribery & Corruption**

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# Mexico

Luis Mancera de Arrigunaga & Juan Carlos Peraza López  
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## **Brief overview of the law and enforcement regime**

### Legal regime

#### *International framework*

Mexico is a signatory to, and has ratified, four international conventions relating to the fight against bribery and corruption. These are as follows.

#### **Inter-American Convention against Corruption**

This convention is aimed at promoting and strengthening development in each of the States Parties, to establish the necessary mechanisms to prevent, detect, punish, and eradicate corruption, and to encourage, facilitate and regulate cooperation among states in relation to this issue. Also known as the Caracas Convention, it was adopted by the Member States of the Organization of American States and entered into force in 1997. It was the first international legal instrument in this field to recognise the international importance of corruption and the need to promote and facilitate cooperation among states to combat it. It also recognises that corruption cannot be solved by suppressive actions alone, but that it is necessary for states to adopt preventive measures aimed at modernising government institutions and eliminating the causes of corruption or the conditions conducive to it.

#### **Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention) of the Organisation for Economic Cooperation and Development (OECD)**

This international convention was signed in 1997 and entered into force in 1999. It establishes measures to deter, prevent and penalise individuals and companies that promise, give or conceal gratuities to foreign public officials involved in international business transactions. Moreover, the convention focuses on international bribery, establishing a commitment by the States Parties to criminalise this conduct, given that bribing foreign public officials to obtain advantages in international trade undermines governance, economic growth and competitiveness in the markets.

#### **United Nations Convention against Corruption (UNCAC)**

Also known as the Merida Convention, for having been adopted in that city in Mexico in 2003, this agreement entered into force in 2005 and its objectives are: to adopt measures to prevent and combat corruption effectively and efficiently, as well as the strengthening of existing standards; to foster international cooperation and technical assistance in the prevention and fight against corruption; and to promote integrity, accountability and proper management of public affairs and public property. In this regard, the convention recognises that an efficient and transparent civil service is the foundation of good governance.

Being a State Party reflects the country's commitment and effort to prevent and combat corruption.

### **United States-Mexico-Canada Agreement (USMCA)**

Mexico ratified this trade agreement in 2019; the United States and Canada did so in 2020. Chapter 27 (Anti-Corruption) of the agreement provides that the parties commit to: effectively enforcing their anti-corruption laws; coordinating and cooperating in the fight against corruption; as well as encouraging the adoption of compliance programmes by the private sector through companies in their countries, with a special emphasis on small and medium-sized enterprises (SMEs).

#### *National framework*

In 2015, Article 113 of the *Constitución Política de los Estados Unidos Mexicanos* (Political Constitution of the United Mexican States – Constitution) was amended to create the *Sistema Nacional Anticorrupción* (National Anti-corruption System – NAS), which is the structure that regulates government entities to prevent, detect, and sanction corruption.

Various laws were issued or amended to bring the NAS into effect, notably:

- *Ley General del Sistema Nacional Anti-corrupción* (General Law of the NAS);
- *Ley Orgánica del Tribunal Federal de Justicia Administrativa* (Organic Law for the Federal Court of Administrative Justice);
- *Ley de Fiscalización y Rendición de Cuentas de la Federación* (Federal Auditing and Accountability Law);
- *Ley Orgánica de la Administración Pública Federal* (Organic Law for the Federal Public Administration);
- *Ley Orgánica de la Fiscalía General de la República* (Organic Law for the Attorney General's Office);
- *Ley General de Responsabilidades Administrativas* (General Law of Administrative Responsibilities – GLAR);
- *Código Penal Federal* (Federal Criminal Code – FCC); and
- *Código Nacional de Procedimientos Penales* (National Code of Criminal Procedures – NCCP).

Most remarkably, the GLAR sets forth a catalogue of corruption-related administrative offences and provides obligations for public servants and legal entities in the prevention of, and fight against, corruption.

Corruption-related crimes are typified in both local and federal criminal codes.

In addition, several laws at a state level (both criminal and administrative) have been issued or amended to prevent, detect, and sanction corruption.

### Offences

#### *A. Administrative perspective*

Most of the administrative offences are established in the federal – GLAR – and local administrative liability laws. The GLAR provides a catalogue of offences for which private parties and/or public officials can be sanctioned:

- *abuso de autoridad* (abuse of power): when a public official misuses its powers to obtain a benefit for itself or a third party, or to cause damage to another person or the Public Service (Article 57 of the GLAR);
- *tráfico de influencias* (influence-peddling): when an individual, corporation or public official, directly or through a third party, uses its position or political influence to obtain a favour, advantage or preferential treatment (Articles 61 and 68 of the GLAR);

- *cohecho* (bribery): when i) an individual or corporation gives or offers an undue benefit to a public official in exchange for something, or ii) a public official accepts, demands or aims to obtain a benefit in such regard (Articles 52 and 66 of the GLAR);
- *peculado* (embezzlement/peculation): when a public official requests or obtains state funds without or against a legal basis (Article 53 of the GLAR);
- *utilización indebida de información* (misuse of privileged information): when a public official obtains a benefit from using privileged information (Article 55 of the GLAR);
- *uso de información falsa* (use of false information): when an individual or corporation files false or altered documents to obtain a benefit or to harm a third party (Article 69 of the GLAR);
- *actuación bajo conflicto de interés* (conflict of interest): when a public official uses his/her position to intervene in matters in which he/she has a conflict of interest (Article 58 of the GLAR);
- *desvío de recursos públicos* (misallocation of public funds): when a public official misallocates, or requests the misallocation of, public resources (Article 54 of the GLAR);
- *colusión* (collusion): this offence is committed by: i) an individual who, with one or more private parties, carries out actions with the intent of obtaining an undue benefit or advantage in public contracting of a federal or local nature; and/or ii) individuals who enter into agreements with competitors to obtain an undue advantage or cause damage to the public treasury (Article 70 of the GLAR);
- *uso indebido de recursos públicos* (unlawful use of public resources): when an individual appropriates, misuses or misallocates public resources (Article 71 of the GLAR); and
- *contratación indebida de ex-servidores públicos* (undue hiring of former public officials): when a private party hires an individual that had been a public official in the previous year and thus has privileged information that could benefit his/her employer (Article 72 of the GLAR).

### B. Criminal perspective

Most of the bribery- and corruption-related crimes are established in the local criminal codes and the FCC. The main crimes provided in the FCC are:

- *ejercicio ilícito del servicio público* (unlawful exercise of public service) (Article 214): in general terms, this offence is committed by public officials who i) exercise public powers without being lawfully entitled to do so, ii) misuse information or documentation, or iii) submit reports stating false facts or circumstances;
- *abuso de autoridad* (abuse of authority) (Article 215): this crime under the FCC encompasses 14 types of conduct. In essence, it refers to public officials who i) use their public capacity to prevent the enforcement of the law, ii) deny the protection or service that they are obliged to grant, iii) do not report an unlawful deprivation of liberty, and iv) demand part of the salary of their subordinates;
- *coalición de servidores públicos* (collusion of public officials) (Article 216): the collusion of public officials to contravene the law;
- *uso ilícito de atribuciones y facultades* (unlawful use of powers and faculties) (Article 217): this crime under the FCC encompasses nine types of conduct that, in essence, refer to i) public officials who unlawfully grant concessions, permits, licences, public contract awards, authorisations, franchises, subsidies on taxes, rights, contract debt, among others; deny granting the aforementioned enabling titles or fail to comply with their obligation to manage and verify them; or divert public funds, ii) individuals or corporations who improperly request or promote the above, and iii) concession- or permit-holders that use false or misleading information regarding the yield or profits obtained;

- *remuneración ilícita* (the acceptance or payment of undue compensation) (Article 217 of the TER): this crime is committed by public officials who approve or receive payments without lawful grounds to do so;
- *concusión* (extortion) (Article 218): when a public official illegally demands undue funds as a tax or contribution, surcharge, income, yield or salary;
- *intimidación* (intimidation) (Article 219): when a public official uses violence to intimidate someone in order to prevent him/her from denouncing any conduct penalised by the GLAR or FCC, or harms those who denounce such offences;
- *ejercicio abusivo de funciones* (abusive exercise of powers) (Article 220): this crime is committed by public officials who unlawfully: i) grant contracts, concessions, permits, licences, authorisations or franchises; or ii) perform any legal act for personal economic benefit or use privileged information for such purposes;
- *tráfico de influencias* (influence-peddling) (Article 221): this crime under the FCC encompasses four types of conduct that, in essence, refer to: i) public officials who promote or manage public business outside their responsibilities; ii) any private party who incites the foregoing; iii) public officials who unduly promote actions that correspond to other public officials, resulting in economic benefits; and iv) private parties who claim to have influence over public officials and intervene before them to promote the illicit resolution of certain business dealings;
- *cohecho* (bribery) (Article 222): this crime is committed by: i) public officials who request or receive any benefit in exchange for doing or refraining from doing an act related to their functions; ii) private parties who promote the foregoing; and iii) federal legislators who, in the federal budget approval process, improperly allocate resources or award public works and/or service contracts, in exchange for money or any consideration;
- *cohecho a servidores públicos extranjeros* (foreign bribery) (Article 222 *bis*): this crime is committed by anyone who, for the purpose of obtaining undue advantages in the development of international commercial transactions, offers or gives money or any other gift to a foreign public official;
- *peculado* (embezzlement/peculation) (Article 223): this crime encompasses four types of conduct that, in essence, refer to any person who diverts public funds from their legal purpose; and
- *enriquecimiento ilícito* (unlawful enrichment) (Article 224): the illegitimate increase of a public official's net worth or patrimony.

Please note that the specific conduct type may vary depending on the corresponding provisions of the GLAR and the FCC. The description of the above offences is a mere conceptual representation that does not reflect the exact text of the law.

### Relevant government bodies

#### *A. Administrative perspective*

Per Article 3 of the GLAR, the authorities in charge of the investigation, procedural matters and assessment of administrative offences are the *Auditoría Superior de la Federación* (Chief Audit Office), the *Secretaría de la Función Pública* (Ministry of Public Administration) and the *Órgano Interno de Control* (Audit body) of each government agency.

The appellate court is the *Tribunal Federal de Justicia Administrativa* (Federal Court of Administrative Justice – FCAJ).

#### *B. Criminal perspective*

Crimes are investigated by the *Ministerio Público de la Federación* (Federal Prosecutor) and the *Fiscalía General de la República* (Attorney General's Office) through the *Fiscalía*

*Especializada en el Combate a la Corrupción* (Prosecutor’s Office Specialised in Combating Corruption). The Attorney General’s Office is the authority that can choose to bring a criminal action before the courts.

The criminal process will then take place before trial courts. The court’s resolution can be challenged through a court appeal.

### Consequences

In general terms, the sanctions or penalties for administrative offences and crimes are:

- For public officials (Article 78 of the GLAR; Articles 212 to 224 of the FCC): i) suspension or dismissal from public office; ii) economic sanctions; and iii) prison.
- For individuals (Article 81 of the GLAR; Articles 212 to 224 of the FCC): i) economic sanctions; ii) temporary disqualification from participating in public procurement; iii) compensation for damages; and iv) prison.
- For companies (Article 81 of the GLAR; Article 422 of the NCCP): i) economic sanctions; ii) temporary disqualification from participation in acquisitions, leases, services or public works; iii) suspension of operations; and iv) dissolution of the corporation.

## **Overview of recent enforcement activity and policy developments**

### Defence (Integrity Policy)

From an administrative perspective, if a serious offence is committed, the authorities will assess whether a corporation had due control over its internal and external processes, to determine its liability; specifically, whether the corporation had an “integrity policy” or compliance programme in effect. Pursuant to the GLAR, a compliance programme must include, at least, the following elements:

- a clear manual of the organisation and procedures in which the functions and responsibilities of each area are outlined;
- a Code of Conduct duly published and practised by all the members of the corporation, which includes enforcement mechanisms;
- control, supervision and audit systems that periodically examine compliance with the integrity standards – or compliance programme – of the corporation;
- whistle-blowing systems within the corporation and towards authorities, as well as disciplinary measures for those who fail to comply with the internal standards and Mexican legislation;
- training systems and processes regarding integrity standards;
- human resources policies aimed at avoiding the hiring of people who might generate a risk to the integrity of the corporation; and
- mechanisms that ensure transparency and public visibility of the corporation’s interests.

### Guidelines for the interpretation and enforcement of national legislation

From an administrative perspective, the Ministry of Public Administration has issued various guidelines on anti-corruption and corporate integrity matters.

In June 2017, the *Modelo de Programa de Integridad Empresarial* (Model Corporate Integrity Programme) was published. This document describes the scope of the mechanisms established by the GLAR for a compliance programme, providing examples of the elements that should be observed.

Furthermore, the *Acompañamiento y Fortalecimiento del Programa de Integridad Empresarial* (Assistance and Reinforcement to the Corporate Integrity Programme) was



published in October 2018. This guide comprises six documents aimed at assisting SMEs in the implementation and management of a compliance programme.

Additionally, the UNCAC calls on each State Party to promote and strengthen measures to prevent and combat corruption in the public and private sectors. Under this innovative approach, the co-responsibility of all actors in society is key to fostering a culture of integrity and good business practices.

To promote compliance with a business integrity policy, within the framework of the Project “Supporting the fulfilment of the Sustainable Development Goals in Mexico through open government practices, citizen participation and strengthening transparency”, the United Nations Development Programme (UNDP), together with the United Nations Office on Drugs and Crime (UNODC), developed the Project “Strengthening and accompanying the Integrity Programme of the Ministry of Public Administration”. The objective of the initiative is to consolidate the business integrity policy in Mexico through the accompaniment of Mexican SMEs in the implementation of the first component of the Integrity Programme of the Ministry of Public Administration – the Business Integrity Programme Model – through the adoption of tools for the prevention of corruption.

To meet this objective, six products have been designed, mainly for SMEs that have commercial relations with the public sector, to develop and implement a Business Integrity Programme. These products were developed in collaboration with Chambers of Commerce and professional associations, with whom a Business Working Group (GTE) was formed to participate in their design and implementation.

A Business Integrity Programme is based on two pillars: the promotion of a culture of integrity; and a methodology for managing corruption risks. The six products developed within the framework of the Project are intended to be support materials to promote a culture of integrity in business within companies; they constitute a proposed methodology for managing corruption risks:

1. **Glossary of Corporate Integrity Terms:** explains the principal terms related to anti-corruption, integrity, compliance and new legal specifications.
2. **Mapping Document and Report of Good Practices for Preventing and Combating Corruption and Promoting Integrity in Small, Medium and Large Enterprises in Mexico 2017–2018:** compiles best practices applied by the members of the GTE and contained in various documents provided by them.
3. **Model Code of Conduct for SMEs:** establishes the minimum principles for action in a company and is a guide for developing tools to promote a culture of business integrity.
4. **Code of Conduct Implementation Manual for SMEs:** contains the methodology to be followed in the implementation of a Code of Conduct. It is characterised by examples and guiding questions that SMEs can consider for the correct implementation of the Code.
5. **Risk Analysis Protocol:** represents a guide focused on the evaluation and management of corruption risks contained in Articles 66 to 72 of the GLAR, as well as the control elements established in Article 25 of the same law.
6. **Self-diagnosis Tool:** evaluates the risk of non-compliance with the regulations applicable to companies of any sector, condition or geographical location, and even chambers, guilds, and associations. It serves as a mechanism to verify compliance with the Integrity Programme and uses, as examples, the corruption risks in Articles 66 to 72 of the GLAR, which can be mitigated with the controls established in Article 25 of the same Law.

Additionally, the *Comisión Nacional Bancaria y de Valores* (National Banking and Securities Commission) and the *Comisión Nacional de Seguros y Fianzas* (National Insurance and



Bonding Commission), respectively, have published guidelines for the prevention and detection of operations with resources of illicit origin.

The guidelines provide, among other things, that such Comissions' supervised entities (banks, 'nonbank banks', stockbroker houses, fintechs, money transmitters, insurance and bonding companies, etc.) are to implement a risk-based methodology in their operations, to better understand the specific risk factors related to acts of corruption derived from their business relationships with national Politically Exposed Persons and Vulnerable Persons, which will facilitate the identification of situations that present a higher risk related to such illicit acts, as well as providing elements to improve their capacity to manage such risks.

#### Significant cases currently under investigation

Please note that since no final judgment has been issued, and in accordance with the principle of presumption of innocence, no comment can be made on the criminal liability of any individual or corporation listed below.

- Rosario Robles: the former head of the *Secretaría de Desarrollo Social* (Ministry of Social Development) is currently being prosecuted for alleged unlawful exercise of public service and misallocation of public funds related to the case publicly known as the *Estafa Maestra* (Master Scam), in which irregular contracts were awarded for the performance of public services, using shell companies to divert more than USD 400 million.
- César Duarte: the former governor of the state of Chihuahua allegedly led one of the most complex corruption networks of Enrique Peña Nieto's six-year term, diverting resources through shell companies, including the use of state resources and illegal campaign financing. He was arrested on July 8, 2020, in Florida, where he is currently in jail while his extradition process takes place.
- Roberto Borge: the former governor of the state of Quintana Roo has been linked to different mechanisms of unlawful enrichment and abuse of power. On November 15, 2017, the then new administration of Quintana Roo filed a criminal complaint against Borge for alleged unlawful land sale and evictions from touristic sites. Later that year, he was arrested in Panama and extradited to Mexico. Borge is still awaiting his final sentence.
- Ricardo Anaya: the former presidential candidate of the *Partido Acción Nacional* has been accused by the Attorney General's Office of alleged money laundering activities, bribery, and criminal association in the context of the approval of the Mexican energy reform. Anaya was subpoenaed to testify, and the investigation is ongoing.
- Jorge Luis Lavalle: the former Senator of the *Partido Acción Nacional* is accused by the Attorney General's Office of alleged operations with resources of illicit origin, criminal association and bribery related to the approval of the Mexican energy reform in 2013, when he was part of the Senate. He is currently in jail while his criminal procedure takes place.
- Mauricio Toledo: a congressman accused of alleged bribery and illicit enrichment. A *desafuero* proceeding was carried out to remove Toledo's constitutional jurisdiction and initiate a criminal procedure against him. The investigation procedure is still ongoing since, according to the authorities, Toledo is no longer in Mexico.

#### Trends in enforcement action

The current administration has often stated that battling corruption is one of its top priorities. The first pillar of the *Plan Nacional de Desarrollo 2019–2024* (National Development Plan 2019–2024) primarily address the eradication of corruption, squandering and frivolity. Furthermore, the *Programa Nacional de Combate a la Corrupción y a la Impunidad, y de*

*Mejora de la Gestión Pública 2019–2024* (National Programme to Combat Corruption and Impunity and to Improve Public Management 2019–2024) has been issued.

These documents demonstrate that the current administration is focused on fighting corruption within the government entities and public sector; moreover, the Minister for Public Administration has stated that, in the first two years of the current administration, the Ministry imposed more than 5,000 sanctions on public officials for corruption-related acts.

### **Law and policy relating to issues such as facilitation payments and hospitality**

Prior to July 2017, the granting of gifts to public officials was permitted, if their value did not exceed a specific monetary threshold. As of such date, hospitality expenditure, gifts, promotional expenditure and facilitation payments may be considered bribes under Mexican legislation if they are intended to obtain an illegal benefit from the public official. In such cases, they can be deemed – and thus prosecuted and sanctioned as – a crime and/or an administrative offence.

In the case that a public official receives a gift or benefit without his/her consent, he/she shall immediately inform the Audit body of the entity that he/she works for, who shall deliver the gift to the *Instituto para Devolverle al Pueblo lo Robado* (Asset Management and Disposal Service) (Article 40 of the GLAR).

### **Key issues relating to investigation, decision-making and enforcement procedures**

On March 11, 2021, the Prosecutor’s Office Specialised in Combating Corruption, under the Attorney General’s Office, issued its annual activity report corresponding to the period from March 12, 2020 to March 10, 2021. Among the information provided in this report is the fact that 779 files related to alleged corruption acts committed by public officials were initiated in this period, making a total of 1,688 files between 2019 and 2021. Also, several files that were initiated before 2021 were concluded.

In this regard, the Ministry of Public Administration imposed several measures on public officials who were found guilty of committing acts of corruption.

Among these cases, a 10-year disqualification from holding public office was handed to Luis Videgaray (former Minister of Finance and former Minister of Foreign Affairs), on public service charges. Further, the Ministry of Public Administration imposed a 20-year ban on holding public office and a fine of MXN 26.5 million on former public officials of the *Agencia Espacial Mexicana* (Mexican Space Agency) over improper payments relating to several contracts with private entities.

These cases illustrate the official discourse and public policy of the current federal administration, which has often stated that battling corruption is one of its top priorities.

#### Self-reporting programmes

##### *A. Administrative perspective*

Articles 88 and 89 of the GLAR provide for a mechanism of sanction reduction for those who self-report their participation in unlawful acts, as long as they fully cooperate with the investigating authority and stop carrying out the offence.

##### *B. Criminal perspective*

The Constitution and the NCCP provide that the authorities in charge of pursuing criminal offences may approve “opportunity criteria” for those individuals who prove their remediation

efforts, as long as the damage is repaired or guaranteed (Article 21 of the Constitution, and Articles 256 and 257 of the NCCP).

As a result of remediation efforts, authorities may refrain from prosecution in the following cases: i) non-violent crimes penalised with up to five years of prison; ii) non-violent economic crimes; iii) when a more severe penalty has already been imposed or will be imposed for another crime; iv) when the defendant provides essential information for the prosecution of a more serious crime and commits to testify in the trial; and v) when the criminal prosecution is disproportionate or unreasonable.

Please note that the Mexican legal framework does not provide procedures for plea bargaining or plea agreements.

### Whistle-blowers

#### *A. Administrative perspective*

Pursuant to the GLAR, anyone who witnesses or reports an administrative offence may request reasonable measures of protection.

The Ministry of Public Administration has issued *Lineamientos para la promoción y operación del Sistema de Ciudadanos alertadores internos y externos de la corrupción* (Guidelines for the Promotion and Operation of the System of Internal and External Whistle-blowers on Corruption), which provide that these measures must be taken with a view to preventing retaliation against the whistle-blower, providing him/her with assistance in any legal claim against him/her, as well as providing psychological or medical care.

Furthermore, the revelation by any public official of the identity of an anonymous witness will constitute an obstruction of justice, and an administrative offence (Article 64 of the GLAR).

#### *B. Criminal perspective*

The *Ley Federal para la Protección a Personas que Intervienen en el Procedimiento Penal* (Federal Law for the Protection of Persons Involved in Criminal Proceedings – FLPPICP) provides that whistle-blowers may be subject to assistance and security measures to mitigate any risk deriving from their participation in judicial procedures (Articles 15 and 16 of the FLPPICP).

## **Overview of cross-border issues**

### Cooperation with overseas bodies

Pursuant to the GLAR, local authorities are required to cooperate with international ones to fight against corruption (Article 90 of the GLAR).

Furthermore, the NCCP provides that Mexico will provide, to any foreign state upon request, the broadest assistance in the investigation, prosecution and punishment of crimes that fall within the foreign state's jurisdiction (Articles 433 to 434 of the NCCP). The Attorney General's Office even has a department for these matters, the *Subprocuraduría Jurídica y de Asuntos Internacionales* (Department of the Attorney General's Office for Legal and International Affairs).

As of November 2020, Mexico is bound to assist foreign states by at least 30 bilateral mutual legal assistance treaties on criminal matters; it has also entered into various multilateral treaties on the matter, such as the OECD Anti-Bribery Convention.

However, there is little information on the extent to which Mexico cooperates with foreign states on bribery and corruption matters, due to the fact that all information regarding incoming and outgoing mutual legal assistance requests, and their content, are deemed confidential.

## Impact of foreign bribery and corruption laws

It should be noted that foreign laws on bribery and corruption often have extra-territorial reach; thus, they are relevant in our country. In that regard, it is customary for corporations that are bound by foreign anti-bribery and anti-corruption laws – such as the United States’ Foreign Corrupt Practices Act or the United Kingdom’s Bribery Act – to enforce compliance programmes under both foreign and national law. The fact that several corporations have been sanctioned abroad for bribery committed in Mexico has only strengthened said practice.

### **Corporate liability for bribery and corruption offences**

#### *A. Administrative perspective*

Corporations will be held liable for any of the GLAR’s serious administrative offences when they are committed by individuals acting in the name or representation of the corporation with the intention of obtaining a benefit for the corporation (Article 24 of the GLAR).

The GLAR sets forth a catalogue of serious administrative offences for which corporations may be prosecuted. Corporations will be held liable for any of the GLAR’s serious administrative offences when they are committed by individuals acting in the name or representation of the corporation with the intention of obtaining a benefit for the corporation (Article 24 of the GLAR).

Each state has its own administrative anti-corruption legislation; therefore, the administrative offences that may be established at a local level may vary from one state to the next.

#### *B. Criminal perspective*

Corporate criminal liability first came into force at a federal level. Article 11 *bis* of the FCC provides for a specific catalogue of crimes attributable to corporations.

Over the last few years, amendments have been made to the criminal codes of the states of Jalisco, Puebla, Quintana Roo, Veracruz and Yucatán, which provide catalogues of crimes substantially similar to the catalogue set forth in the FCC.

The criminal codes of the other 27 states do not provide specific catalogues of crimes in such regard; however, a corporation will be liable for the crimes committed on its behalf, in its favour or with the means that it provides, if there was a “lack of due control” within the corporation (Article 421 of the NCCP).

The absence of a specific catalogue of offences puts companies at risk of criminal liability for any offence, with great discretionary power being held by the authority and no clear fines or penalties. It should be noted that criminal liability does not cease if corporations are merged, demerged, or acquired by third parties. Thus, the “succeeding entity” can be held accountable for offences committed prior to an acquisition (Article 421 of the NCCP).

### **Proposed reforms / The year ahead**

On October 6, 2020, an initiative for a *Ley General de Responsabilidad Empresarial y Debida Diligencia Corporativa* (General Law of Corporate Liability and Due Diligence) was filed. This remains relevant due to the fact that, if enacted, all corporations would be required to have a “social responsibility programme” and a corporate governance and compliance programme to prevent, detect and sanction corruption.



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Luis leads the administrative, constitutional, tax litigation and telecom regulation practices. He is specialised in government negotiation, high-level administrative litigation, compliance, anti-money laundering, government procurement and boutique tax issues.

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