

**Mexico's New Anti-Corruption Legal Framework.**

by Carlos A. Chávez

As a result of the joint and persistent efforts made by the Mexican public and private groups with the purpose of implementing a comprehensive and effective anti-corruption reform that could battle the overspread corrupt practices across most of the economic areas of the country, and following the mandate set forth by the Constitutional Reform of May of 2015 that introduced the National Anti-corruption System (*Sistema Nacional Anticorrupción*), the Mexican Government has finally passed a bill with the initial amendments to the Mexican regulatory framework that further detail the new federal anti-graft measures to be applied in the country and the operation of the National Anti-corruption System.

Prior to both last year's enactment of the Constitutional Reform and to the introduction of the bill that we discuss below, Mexico had a very spread and blurry anti-graft legal framework, which in turn fostered a very limited to a null imposition of liabilities due to corrupt practices under the scope of the previous laws. The Federal Government's implementation of structural reforms in the energy, financial and telecommunication sectors, among others, amplified the need of creating a better framework for the fight against corruption in the country.

After a heavy and very public discussion of the initial draft of the anti-corruption bill package in the Mexican Congress, the bill was finally passed and published in the Federal Official Gazette on July 18, 2016.

Below is a summary of the amendments carried by the anticorruption bill to the Mexican legal framework:

| <b>Area</b>  | <b>New Laws</b>  | <b>Amended Laws</b>  | <b>Repealed Laws</b>   |
|--|--|--|--|
| <b>Operation of the National Anticorruption System</b> | - General Law of the National Anticorruption System      |  |  |
| <b>Imposition of Administrative Liabilities</b>        | - General Law of Administrative Liabilities              | - Federal Law of Liabilities of Public Servants                  | - Federal Law of Administrative Liabilities of Public Servants<br>- Federal Anticorruption Law in Public Procurement |
| <b>Administrative Courts</b>                           | - Organizational Law of the Federal Administrative Court |  | - Organizational Law of the Federal Tax and Administrative Court   |
| <b>Imposition of Criminal Liabilities</b>              |  | - Federal Criminal Code  |  |
| <b>Operation of the Attorney General's Office</b>      |  | - Organizational Law of the Attorney General's Office            |  |
| <b>Operation of the Federal Public Administration</b>  |  | - Organizational Law of the Federal Public Administration        |  |
| <b>Operation of the Federal Superior Audit Office</b>  | - Federal Government Audit and Accountability Law        | - Tax Coordination Law<br>- General Law of Government Accounting |  |

Although this first anti-corruption bill imposes seven major changes to the Mexican regulatory framework, the bill has three main pillars that outline the operation of the new anti-corruption system, the distinct categories of administrative liabilities and the special courts that will handle the cases under the new structure. These pillars are: (i) the General Law of the National Anti-corruption System; (ii) the General Law of Administrative Liabilities; and (iii) the Organizational Law of the Federal Administrative Court.

### **I.- General Law of the National Anti-corruption System.**

The purpose of this law is to serve as a guideline for the coordination within the new National Anti-corruption System of all the relevant authorities at the Mexican federal, state and municipal levels of government. All of these authorities and the operation of the National Anti-corruption System will be coordinated by a Coordinating Committee that shall issue public policy on anti-graft measures to be applied in the country.

The agencies that will have a seat in the Coordinating Committee are: (i) the Specialized Anti-graft Office; (ii) the Federal Administrative Court; (iii) the Federal Superior Audit Office; (iv) the Mexican Federal Institute for Transparency, Access to Public Information and Data Privacy Protection; (v) the Committee of Public Participation; (vi) the Federal Judicial Council; and (vii) the Federal Comptroller Ministry.

Furthermore, the Committee of Public Participation (which is part of the Coordinating Committee) and the National Auditing System are created and empowered by this new law, which also provides the creation of a National Digital Platform that will hold seven different digital systems with relevant information related to public procurement and public servants.

### **II.- General Law of Administrative Liabilities.**

The new General Law of Administrative Liabilities repeals certain provisions of the Federal Law of Liabilities of Public Servants and entirely repeals and replaces both the Federal Law of Administrative Liabilities of Public Servants and the Federal Anti-corruption Law in Public Procurement. Although only a part of the new anti-corruption system, the passing of this law was vastly coveted by different social groups across Mexico and subject to a hot debate in Congress.

This law provides the control mechanisms for the fight against corruption inside and outside of the Mexican Government, defines several obligations and liabilities for public servants and certain private parties that may incur in the conducts deemed as corrupt by the law and the corresponding procedures for the application of penalties to any perpetrator. The main obligation imposed to public servants under this law consists in the compulsory disclosure in the National Auditing System of a list of their assets, of any conflict of interest and of their tax return statement. On that same regard, the law sets forth the creation of a protocol that shall be complied with by all public servants involved in public procurement procedures.

A catalogue of serious administrative violations by public servants is detailed within the General Law of Administrative Liabilities and includes the following: any form of bribery, embezzlement and profiteering, misuse of official information, collusion, abuse of official capacity, improper influence, official action with a conflict of interest, undue contracting, concealment and contempt.

Any private party associated with the perpetration of the aforementioned violations will be sanctioned accordingly, and for that matter, the law provides that companies shall be sanctioned for any improper conduct carried out by individuals acting on its behalf. The penalties to be imposed to private parties for any violation under this law may consist of any of the following: economic penalties, temporal ineligibility to participate in public procurement procedures, suspension of activities (ranging from three months to three years), dissolution of the company, and compensation to the corresponding tax office.

### **III.- Organizational Law of the Federal Administrative Court.**

The Organizational Law of the Federal Administrative Court repeals and replaces the Organizational Law of the Federal Tax and Administrative Court. Accordingly, the new Federal Administrative Court to be created under this new law and which will operate under the National Anticorruption System, will replace the former Federal Tax and Administrative Court that currently operates all over the country.

In essence, the new court will operate in a similar manner to its predecessor; however, now the Federal Administrative Court will be in charge of resolving any matter brought before it and related to the conducts carried out by public servants and/or private parties and penalized under the new General Law of Administrative Liabilities, as detailed above.

This anti-corruption bill also conveys amendments to another four federal laws and the introduction of a new federal law, the Federal Government Audit and Accountability Law, which strengthens the role and operation of the Federal Superior Audit Office under the new National Anti-corruption System.

Furthermore, the Organizational Law of the Attorney General's Office is amended in order to create and empower the Specialized Anti-graft Office (part of the Coordinating Committee described above) that will work under the scope of the Attorney General's Office in the prevention and fight against corruption. The Federal Criminal Code is amended in order to categorize additional practices as corrupt crimes to be prosecuted by the federal authorities and standardizes them, to a certain extent, with the nature of the General Law of Administrative Liabilities. The Tax Coordination Law and the General Law of Government Accounting got minor amendments to one article each; meanwhile, the Organizational Law of the Federal Public Administration is amended to empower the role of the Federal Comptroller Ministry in the fight against corruption under the new scheme.

This bill is definitely a big step taken by the Mexican Government in the fight against corrupt practices in the country, but surely just the first one in a series of reforms that are much needed and which may include, in the near future, amendments to the Public-Private Partnerships Law, the Public Works Law and the Federal Law to Prevent and Identify Transactions with Illegally Obtained Funds, among others. Following the gradual implementation of the bill described in this article, the Mexican state legislatures shall harmonize the state's regulation with the new federal anti-graft regulatory framework.

JATA is a Mexican law firm with offices at Monterrey, Mexico and Houston, Texas. Please contact us with any comments or concerns regarding this reform.

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