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Mexico

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Overview

The legislation implementing the National Anticorruption System (*Sistema Nacional Anticorrupción*, the "SNA") in Mexico was officially published on July 18, 2016. The SNA consists of four new statutes and amendments to five existing statutes that regulate in detail a far-reaching Constitutional amendment passed in 2015. The legal reform underlying SNA is the most comprehensive, coherent and consistent effort to date, by both the Mexican Government and civil society, to curb corruption.

It is not a coincidence that the SNA was born amidst popular outrage over recent cases of corruption and conflicts of interest involving Federal and State officials at the highest levels. Corruption has often been referred to as a deep-rooted "cultural phenomenon" in Mexico. However, a new mindset is quickly evolving which rejects corruption as a matter of cultural determinism. Recently, the independent press, social media and active NGOs have revealed unethical conduct of Government officials that would have been overlooked a decade ago. In this context, the SNA is a powerful tool, which, if used wisely and responsibly both by the Government and citizens, could revert the centuries old trend whereby public and private persons have abused State functions for their personal gain.

The General Law of the National Anticorruption System (*Ley General del Sistema Nacional Anticorrupción*, the "SNA Law") is the main engine driving the SNA as it provides for the coordination, on a nationwide basis, of the enhanced supervisory, enforcement and accountability framework that is contained in the rest of the SNA statutes. At the core of the SNA is the General Administrative Responsibilities Law (*Ley General de Responsabilidades Administrativas*, the "Responsibilities Law"), which will enter into force on July 19, 2017. This unprecedented piece of legislation was born as a citizens' initiative that gathered the required signatures to be debated before the Federal Congress. This statute, popularly known as "*Ley 3 de 3*" creates, among other things, an evolved anticorruption environment for Government officials, while for private parties it introduces compliance programmes, better delineates corrupt practices, details liability for legal entities and their directors and regulates investigation procedures and leniency programmes.

Considering the recent developments of Mexican anticorruption legislation outlined above, this chapter will explain the guiding principles of the SNA, namely: (i) coordination and accountability; (ii) enforcement; and (iii) private party liability and compliance. We will conclude this chapter by referring to recent enforcement activity and the next steps following the enactment of the SNA.

Coordination and accountability

One of the main challenges in Mexico when implementing legislation for nationwide

observance, such as the SNA, is to ensure compliance with the Federal system enshrined in the Mexican Constitution. In essence, under the Mexican Federal system, matters not specifically reserved in favour of the Federal Government by Mexico's Federal Constitution are within the sovereignty of each of the 32 States which make up the Mexican Republic.

Prior to the adoption of the SNA, the absence of a nationwide accord to coordinate anticorruption laws and enforcement at the Federal and State levels resulted in a lack of Federal-State as well as interstate cooperation for fighting corruption. As would be expected, the diverging regulation of corruption throughout the land created wide legal gaps that have been astutely relied upon by public and private persons. While, for example, in 2012, the Federal Congress passed the Federal Anticorruption Law in Government Procurement (*Ley Federal Anticorrupción en Contrataciones Públicas*) and on that same year the State of Nuevo León overhauled its anticorruption framework, other States such as the State of Mexico still relied on a couple of outdated articles in their criminal codes and a set of patchy regulations applicable only to Government officials.

The first step towards allowing a comprehensive and far-reaching anticorruption framework were the amendments to the Mexican Constitution published on May 27, 2015, which laid out the philosophy of the SNA: a coordinated nationwide system of Federal and State laws and Government bodies charged with the enforcement of the same. Such Constitutional Amendments contemplated the passing of implementing legislation for the SNA.

The SNA Law created the Coordinating Committee (*Comité Coordinador*), which is the body responsible for deploying and coordinating the SNA at the Federal and State levels. Specifically, the Fourth Transitory Article of the Constitutional Amendments imposes an obligation on State legislatures to create or adjust local legislation to be consistent with the Federal SNA within 180 days, beginning on July 19, 2016.

In order to insulate the Coordinating Committee from the whims of Government and politics, the SNA Law provides that it will always be chaired by a non-governmental person that is a member of the Citizens Participation Committee (*Comité de Participación Ciudadana*).[1] The other members of the Coordinating Committee shall be representatives of the other bodies that play a role in the adequate functioning of the SNA: (i) the head of the Superior Federal Comptroller (*Titular de Auditoría Federal de la Federación*); (ii) the Head of the Anticorruption Prosecutor (*Titular de Fiscalía Especializada de Combate a la Corrupción*); (iii) the Secretary of Public Function (*Secretario de la Función Pública*); (iv) a representative of the Council of the Federal Judiciary (*representante del Consejo de la Judicatura Federal*); (v) the Chairman of the Access to Public Information and Data Protection Institute (*Presidente de Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*); and (vi) the Chief Justice of the Federal Administrative Justice Court (*Presidente de Tribunal Federal de Justicia Administrativa*). At its quarterly meetings, the Coordinating Committee must adopt all measures for the deployment of the SNA.

Once all of the members of the Coordinating Committee have been appointed to their positions,[2] this engine of the SNA will be ready to be put in motion. The SNA Law also contemplates the executive bodies that will enable the Coordinating Committee's mission: namely, the Executive Secretariat and the Executive Commission, which will act through the executive authority of an individual appointed as Technical Secretary. Needless to say, the quality and talent of the individuals nominated to such positions and the budget allocated to the new bodies will be paramount to the successful deployment of the SNA.

The complex administrative architecture devised by the SNA Law will require careful and diligent preparation to meet all relevant deadlines; the most crucial of which will be

the entry into force of the Responsibilities Law on July 19, 2017. In this context, the Coordinating Committee must deliver an Annual Work Plan embedded with mechanisms for its periodic evaluation and adjustment. Coordination with the State anticorruption systems will also be at the core of the Coordinating Committee's mandate. There will be considerable expectation as to the contents of the Coordinating Committee's initial Work Plan as it will set the tone for implementation of the SNA.

Another challenging task facing the Coordinating Committee will be the development of the Digital National Platform (*Plataforma Digital Nacional*): a state of the art IT system linking all bodies of Federal and State Government for the sharing of data. The SNA is designed to build on real-time information at the Federal and local level regarding the transparency declarations of Government officials, information about sanctioned officials and private parties, public complaints on administrative offences and acts of corruption and procurement process records.

The vast attributions of the Coordinating Committee are enhanced by an accountability system which ensures that each of the authorities involved in the functioning of the SNA does its job. On the one hand, the Coordinating Committee's mandate will be measured against its Annual Report in which it will disclose the progress of its initiatives and results. On the other hand, pursuant to article 36 of the SNA Law, State legislatures must enact statutes providing for similar standards of accountability to be observed by the local bodies implementing the SNA, including adequate procedures for complying with recommendations handed down by the Coordinating Committee and the publication of reports describing anticorruption initiatives, risks and the results of recommendations.

Enforcement

Ineffective enforcement of laws is a challenge faced by many Mexican institutions and is a challenge that the SNA intends to correct on the front of the fight against corruption. To that end, the SNA has taken a two-pronged approach that consists of: (i) empowering existing Government institutions in charge of enforcing the new legal framework; and (ii) the enactment of substantive laws that delineate the obligations of Government officials and private parties while regulating in more detail the corrupt practices that will be punished.

Institutional empowerment

The capabilities of four existing institutions have been enhanced to fight corruption. The amendment of the enabling statutes of three of these public bodies, and a brand new enabling statute for one of them, translates into a process of institutional empowerment that cuts through the administrative, prosecutorial, judicial and Government spending audit functions at the Federal level. Thus, the SNA not only creates the framework for institutional coordination, but affords more comprehensive and articulated tools to the authorities responsible for its enforcement. Also, as mentioned, the States of Mexico have the Constitutional mandate to create an equally comprehensive and effective institutional environment.

The Ministry of Public Function (*Secretaría de la Función Pública*) ("SFP") has long served[3] as the agency of the Federal Executive in charge of acting as the comptroller of public service. At the start of the current administration of President Peña Nieto, the SFP had been scheduled to disappear and, while it lingered into its sunset, it earned a reputation for complacency and turning a blind eye to serious corruption and conflict of interest situations. In contrast, the SNA amendments repealed the decree whereby the SFP had been set to disappear, and relaunched the SFP though the amendments to the Organic Law

of the Federal Public Administration (*Ley Orgánica de la Adminsitración Pública Federal*) ("LOAPF"). In an effort to return dignity and respect to the position of Secretary of the SPF, the amendments to the LOAPF provide that he or she must be ratified by the Senate and must file his or her transparency declaration. In line with this, the amendments restate the core functions of SPF, which include the appointment of external comptrollers and internal comptrollership bodies (*órganos internos de control*) to each of the agencies and the conduct of investigations for unethical and corrupt behaviour within such agencies.

On the prosecutorial front, through the amendments to the Organic Law of the General Prosecutor of the Federation (*Ley Orgánica de la Procuraduría General de la República*), a new Specialised Office of the Prosecutor (*Fiscalía Especializada*) has been created for investigating and indicting corrupt practices (the "Anticorruption Prosecutor"). With this change, the General Prosecutor's Office through the Anticorruption Prosecutor shall be accountable for probing corruption cases, developing investigation capabilities specifically aimed at evidencing the existence of corrupt practices and pursuing criminal charges against offenders. This new development introduced by the SNA should be able to reverse the prior trend where no division of the General Prosecutor's Office was particularly focused on corruption cases and, as a result, prosecution was isolated, random and often concentrated on petty bribes.

The Federal Tribunal of Administrative Justice (*Tribunal Federal de Justicia Administrativa*) ("TFJA") has long been a respected institution of the Mexican State. In the context of the SNA, the TFJA's enabling statute was repealed and its prior name changed;[4] however, the institution remains the same including its respected judges and staff. The novelty of the reform is that in addition to trying cases related to the legality of administrative and tax laws and of Federal Government actions, the TFJA is now responsible for trying cases related to corruption offences. To that end, a newly created Special Chamber (*Sala Especializada*) of the TFJA has jurisdiction over cases brought against Government officials involving "Serious Offences" identified in the Responsibilities Law as well as "Offences of Private Parties". One of the challenges for TFJA will be the form over substance principles that apply to the enforcement of administrative laws, pursuant to which courts must "pigeonhole" conducts within the rigid frame of the legal provisions. Another challenge will be the extremely high burden of proof that the accusations under the Responsibilities Law will need to meet, as TFJA judges must observe a "beyond reasonable doubt" standard.

Finally, the Superior Federal Comptroller (*Auditoría Superior de la Federación*) (the "ASF") is a body within the structure of the Mexican House of Representatives (*Cámara de Diputados*) with technical and procedural independence for reviewing and auditing the Federal Government's spending. Through the corresponding Constitutional Amendments and the new Federal Oversight and Accountability Law (*Ley de Fiscalización y Rendición de Cuentas de la Federación*), the audit process of Federal spending has been streamlined and is now linked with the SNA enforcement mechanisms: the ASF must notify the TFJA and the Anticorruption Prosecutor of any findings of corrupt practices.

Substantive provisions

(i) Background

During the heated debate surrounding the SNA reform, the Responsibilities Law was the centrepiece that drew the most attention from the media and the general public. The Responsibilities Law owes its notoriety to being the first "citizens' initiative" in the history of Mexico to be voted into law.[5] For that to happen, the draft legislation had to surmount the the burdensome process of gathering signatures from at least 0.13% of registered voters:

roughly 120,000 signatures. The high-quality draft legislation, which had been carefully prepared by a group of able academics from recognised research institutions and think tanks – with the collaboration of a well-selected group of experts – quickly gathered the support of 634,143 signatories.

During its passage through the Mexican Senate and House of Representatives, the debates around the initiative focused mainly on its provisions related to the transparency declaration that Government officials must complete and file, including three types of information: (i) asset declaration; (ii) conflict of interest declaration; and (iii) tax return information. Hence the popular name that the Responsibilities Law received throughout its legislative process: "Law 3 of 3"(*Ley 3 de 3*), as well as the widespread belief that its scope is limited to its transparency declaration provisions. Actually, the Responsibilities Law is the statute that, together with the amendments to the Federal Criminal Code (*Código Penal Federal*), lays out most of the substantive provisions of the SNA.

(ii) The Anticorruption Law

Until the Responsibilities Law enters into force on July 19, 2017, the Federal Anticorruption Law in Public Procurement (*Ley Federal Anticorrupción en Contrataciones Públicas*) ("Anticorruption Law") enacted in 2012 will continue to apply from an administrative angle to corrupt and unethical conduct. The scope of the Anticorruption Law is more limited than the Responsibilities Law as it only applies to corrupt practices occurring in the course of Federal procurement processes, while it does not tie into the coordination and enforcement system of the SNA. Moreover, there are no reported cases where the Anticorruption Law has been applied, perhaps because it was devoid of an enforcement system such as the one that is being implemented through the SNA.

Nonetheless, the Anticorruption Law, which as of the date this chapter goes to press is still in force, introduced novel concepts in Mexico that the Responsibilities Law has built upon: (i) it does not limit punishable conduct to bribery, but rather contemplates other practices that are equally noxious in dealings with the Government, such as collusion, influence peddling, presentation of deceiving or false information and covering up banned bidders;[6] (ii) it contemplates large monetary penalties applicable to private parties, both individuals and legal entities; (iii) it sets out that the performance of corrupt practices through an agent or intermediary will be attributable to the principal; (iv) it punishes cases of bribery committed with a foreign government official; and (v) it sets forth some general principles for receiving leniency treatment upon self-reporting.

(iii) The Responsibilities Law

The Responsibilities Law is a comprehensive statute that regulates anticorruption in a number of ways. With respect to Government officials, it lays out the standards of conduct and sets forth the mechanisms and procedures for the filing of transparency declarations and sets forth the "Serious Offences" and "Non-Serious Offences" for which they may be punished. As regards private parties – including both individuals and legal entities – the Responsibilities Law sets forth a catalogue of "Acts of Private Parties" that are punishable as well as compliance standards that, if followed, may result in reduced fines. Finally, the Responsibilities Law regulates, at length, the procedures to be followed by the SFP and the ASF in the investigation of Serious Offences, Non-Serious Offences and Acts of Private Parties and the judicial process with respect to Serious Offences and Acts of Private Parties before the TFJA.

(iv) Criminal legislation

The amendments to the Criminal Code are scheduled to enter into force on the same date that the head of the Anticorruption Prosecutor is appointed by the Mexican Senate.

The amendments to the Federal Criminal Code reorganise existing legal provisions into a Section renamed "Crimes arising from Corrupt Situations" and incorporate the necessary references to the SNA legal framework. The substantive amendments to the Federal Criminal Code, however, are not the most innovative feature of the SNA: for the most part, conduct criminalised prior to the amendments continue to be contemplated in substantially the same terms, including bribery, intimidation, abusive exercise of authority, influence peddling, embezzlement of Government funds and illicit enrichment.

Moreover, the amendments to the Federal Criminal Code forewent the opportunity to improve the wording that defines some of the criminal conducts. For example, the definition of bribery (*cohecho*) retains narrow language that requires the actions prompted by the bribe – or the promise of a bribe – to be within the functions and employment of the relevant Government official. In other words, in order for there to be a determination of criminal liability for bribery, the Federal Criminal Code requires that the relevant Government official be formally vested with the authority to carry out an action or inaction in exchange of which he or she has received something of value.[7] By way of example, in the context of bribery occurring in a procurement process, the narrow language retained by the Federal Criminal Code could lead to the acquittal of a Government official that receives something of value in exchange for having the award issued in favour of one of the bidders, provided that such official does not have the formal authority to issue the award – but causes another Government official that has the formal authority to do so.[8]

The most relevant development on the criminal front, however, does not arise from the amendments to the Federal Criminal Code; rather it flows from the new National Code of Criminal Procedure (*Código Nacional del Procedimientos Penales*, the "Code of Criminal Procedure"), which entered into force nationwide, at both Federal and State level, on June 14, 2016. In addition to implementing a uniform criminal procedure and oral hearings, it introduces the novel concept under Mexican law of determining criminal liability against legal entities. In this regard, article 11*bis* of the Federal Criminal Code links certain criminal offences, including, specifically, the crime of Bribery (*Cohecho*) to the provisions of the Code of Procedure which contemplate criminal enforcement against legal entities independently of the criminal liability that may be found with respect to the individuals involved.

Articles 421 through 425 of the Code of Criminal Procedure set forth the principles pursuant to which liability against legal entities may be determined, including penalties that a judge may order upon a finding of criminal liability; namely fines, disgorgement of assets used in connection with or that result from the criminal conduct, publication of the judgment and dissolution of the legal entities. The judge may also order the following measures: suspension of activities; closure of its places of business; prohibition to continue conducting the activities in the course of which the criminal conduct was committed; banning from procurement procedures; receivership to protect employees and creditors; and a public warning. Upon assessing the harsh consequences that may attach to a legal entity, the judge will have to take into account the extent to which there has been a failure to exercise due control of the relevant entity, the quantum of amounts and its legal nature and annual volume of business, as well as the entity's level of compliance with applicable laws and regulations.

Two other novel legal concepts have been introduced by the Code of Criminal Procedure which are also very relevant in the context of the new legal framework applicable to corrupt practices. On the one hand, articles 191 through 200 of the Code of Criminal Procedure contemplate the possibility of entering into a consent decree, whereby certain conditions

and obligations may be agreed between the criminal offender and the prosecutor, which if complied with by the former, may suspend criminal liability and may ultimately extinguish it. On the other hand, the standard of proof requires that guilt in criminal proceedings be determined upon a finding that is beyond reasonable doubt. The novelty of both concepts is bound to present both opportunities and challenges for prosecutors and defence attorneys. Specifically, from the perspective of the SNA and the anticorruption framework, the alternative of seeking a consent decree will not be available in a bribery case where the bribe exceeds MX$36,500 Mexican Pesos (roughly US$1,900). Regarding the standard of proof, prosecutors will need to introduce evidence that convinces the judge beyond reasonable doubt, something that is bound to raise the bar on prosecutors' diligence.

Private party liability and compliance

Liability of private parties

One of the overarching principles of the SNA is to make private parties co-responsible with Government officials for acts of corruption. To that end, the Responsibilities Law creates a catalogue of conduct labelled "Private Party Offences". Such catalogue essentially restates the conduct currently punished by the Anticorruption Law (see the subsection on 'The Anticorruption Law' above), but broadens their scope of application as they must no longer be linked to public procurement procedures; rather, the punishable conduct captures any corrupt dealings with Government officials. As explained in the section entitled 'Institutional empowerment' above, the TFJA is the judicial body with jurisdiction over such conducts.

The legal consequences of committing Private Party Offences are also amplified *vis-à-vis* what is contemplated in the Anticorruption Law. The penalties that may be assessed against private individuals include fines of up to twice the amount of the benefits obtained or, if no benefits have been obtained, of up to roughly US$550,000; private individuals may also be held liable for damages caused to the Government's finances as well as debarment for three months to eight years from contracting with the Government at any level (Federal, State and Municipal). In the case of legal entities, the finding of Private Party Offences may also result in a fine of up to twice the amount of the benefits obtained or, if no benefits were obtained, of up to roughly US$5.5.million, liability for the damages caused to Government finances and debarment from Government contracting for three months to 10 years. Other measures that may also be imposed upon private legal entities include suspension from activities related to the corrupt practices for a period of between three months and three years and dissolution, provided, in both cases, that a benefit for the legal entity is shown and that management has been privy or that systemic offending conduct is found.

The criteria for assessing the severity of the sanctions outlined above will depend on the seriousness of the offence and whether management of the legal entity has voluntarily disclosed the conduct and cooperated with the investigation or not. Moreover, leniency may be sought by private parties, provided that a procedure for the investigation of the corrupt conduct has not been formally notified and that a precise cooperation protocol is agreed upon with the investigating agency and cooperation commitments are complied with. The first person that submits to a leniency programme may be subject to reductions of between 50% and 75% of the assessable fines and up to total acquittal from debarment. Persons that pursue leniency after the first person has come forward may be granted a reduction of up to 50% of the assessable fines.

As described above, the Responsibilities Law reinforces and better prescribes the sanctions currently contemplated by the Anticorruption Law as well as the availability of leniency

programmes. There is little clarity, however, as to how leniency will be sought under the Responsibilities Law before administrative authorities and how the TFJA interacts with the criminal prosecution of those same offences. As explained in the subsection on 'Criminal legislation' above, the ability to enter into a consent decree with a criminal prosecutor is only available in cases of petty bribery, whilst in bribery cases involving an amount in excess of roughly US$1,900, the prosecutor would appear to have no option but to bring charges. Unless there is absolute clarity as to how the disclosing person will be aided on both the administrative and criminal fronts, the virtuous conduct of disclosure and cooperation envisaged by the Responsibilities Law will be of limited practical use.

Compliance

The Responsibilities Law gives a preeminent place to the implementation and maintenance of compliance programmes, stressing to that effect that legal entities will be responsible for corruption offences committed by persons acting on its behalf and that result in a benefit for such legal entity. In line with this, article 24 of the Responsibilities Law lays out the elements that a corporate compliance programme must fulfil (*política de integridad*). Such elements are: (i) an organisation and procedures manual that is clear and complete and sets forth the responsibilities of each area and leadership roles; (ii) a code of conduct that is publicly available that sets forth systems and mechanisms for its real application; (iii) adequate and effective control, supervision and audit systems that are consistently and periodically running; (iv) adequate reporting systems, both internal and before competent authorities, as well as sanctions and specific consequences applicable to offenders; (v) adequate training programmes; (vi) HR policies for screening high-risk individuals in the course of recruiting procedures; and (vii) mechanisms for transparency and publicity of interests.

Whether or not a compliance programme may be put in place for a legal entity will be considered in an assessment of liability for corrupt practices. Thus, a compliance programme that is duly implemented and functioning will serve legal entities that are being investigated for alleged corrupt practices to obtain more lenient treatment with respect to the fines and measures that may be ultimately imposed. By the same token, the lack of a compliance programme may result in harsher fines and measures being imposed.

Recent enforcement activity

An ongoing, high-profile corruption investigation and enforcement process is being conducted in the State of Nuevo León, under the State's recently enacted anticorruption framework. Since June 3, 2016, the Specialised Prosecutors Office for Corruption Cases (*Subprocuraduría Especializada en Combate a la Corrupción*) of the State of Nuevo León is in the process of investigating Rodrigo Medina, the former State Governor and 10 other State Government officials that served during his administration. Six such officials have already been banned from public service. The Specialised Prosecutor, Ernesto Canales, has revealed that charges have been brought against a total of 30 individuals. Moreover, upon the application by the Specialised Prosecutor's Office, a State Judge issued an injunctive order for the attachment of properties owned by the former Governor and the 10 officials.

Based on publicly available sources, the investigation is reportedly focused on the review of 8,000 Government contracts awarded during the administration of Rodrigo Medina, some of which allegedly present irregularities ranging from overpricing to bid rigging. Other allegations that are being investigated include the granting of illegal benefits to the car manufacturer KIA for setting up its manufacturing facility in the State. The Anticorruption Prosecutor has commented in interviews that information disclosed by whistleblowers has

been crucial for the investigation. He has further indicated that the whistleblowers are mostly persons from the private sector related to some of the private companies allegedly involved in the corruption cases and have been afforded leniency in exchange for assistance with the investigation. As at the time of writing, there is no available information about the amounts that could have been delivered as part of the alleged corrupt conduct.

Conclusions

The SNA represents an important and noteworthy development in the fight against corruption in Mexico. The quality, consistency and comprehensiveness of the legislation implementing the SNA will afford a precious tool to Government and civil society. However, the success of the SNA will ultimately depend on the appointments to the various bodies and agencies that are being created or relaunched; they will all be in need of persons that are truly committed to shifting the entrenched culture of corruption in Mexico. The budgetary and political commitment of the Federal and State Governments to fully deploy the SNA will also be crucial. Whether or not the commitment of persons and institutions will be there to take the SNA forward is to be evident in the coming 10 months.

* * *

Endnotes

1. The Citizens Participation Committee is also a body created by the SNA Law, which comprises five reputed and independent members of civil society that are selected through a complex process involving the Mexican Senate that is designed to guarantee the credentials and impartiality of such members. The process for the selection of the Citizens Participation Committee is scheduled to commence on October 2016, and it will be one of the touchstones for the integration of the Coordinating Committee.
2. While some of its members, such as the head of the Superior Federal Comptroller, the Secretary of the Public Function and the head of the Access to Public Information and Data Protection Institute are already appointed, the appointment of its other members, such as the Citizens Participation Committee representative and the Chief Anticorruption Prosecutor, are still pending. It is expected that such appointments will be made during the last quarter of 2016.
3. This agency was originally created in 1982 and existed under the name of *Secretaría de la Contraloría General de la Federación*; in 1994 it changed its name to *Secretaría de la Contraloría y Desarrollo Administrativo* and since 2003 has existed under that name.
4. Before the enactment of its new enabling statute, the Federal Tribunal of Administrative Justice (*Tribunal Federal de Justicia Administrativa*) was previously known as the Federal Tribunal of Administrative and Fiscal Justice (*Tribunal Fiscal de Justicia Fiscal y Administrativa*). Although the word "*Fiscal*", which refers to its jurisdiction on tax matters, was eliminated from its name, it retains such jurisdiction for settling cases related to the challenge of Mexican tax laws.
5. It was only in 2012 that Articles 35 and 71 of the Mexican Constitution were amended in order to include the rights of citizens to present legislative initiatives before the Mexican Congress.
6. The following practices are considered violations under Article 8 of the Anticorruption Law: (i) promising, offering or delivering money or any other gift to a Government

official or a third party (participating in the design or preparation of the call for a public bid or any other act related to the Federal public procurement process) in exchange for such Government official's restraint from performing any act related to his/her responsibilities or to the responsibilities of another Government official, with the purpose of obtaining or maintaining a benefit or advantage, regardless of the acceptance or receipt of said money or gift or of the results obtained in connection therewith; (ii) carrying out any action that implies or has as the purpose of obtaining an undue benefit or advantage within any Federal procurement process; (iii) carrying out any act or omission with the intent or effect of participating in a Federal public procurement process, notwithstanding that such person is restricted by law or a governmental order from participating in such a process; (iv) carrying out any act or omission with the intent of avoiding or simulating compliance with the requirements or rules set forth in any public procurement process; (v) intervening for the benefit of any person restricted from participating in Federal public procurement processes, with the intent of having such person benefit, either totally or partially, from the relevant contract; (vi) causing a Government official to give, undersign, grant, destroy or deliver a document or a good, with the intent of receiving a benefit or advantage for oneself or a third party; (vii) promoting or using economic or political influence (real or fictitious) on any Government official with the purpose of obtaining for oneself or a third party a benefit or an advantage, regardless of the effectiveness of such influence or the results obtained in connection therewith; and (viii) presenting altered or false documentation or information with the purpose of obtaining a benefit or an advantage.

7. Pursuant to a binding precedent of the Supreme Court of Justice of Mexico, the crime of bribery is deemed to have occurred when: (i) money or any other economic benefit is offered or requested, respectively, by a private party or Government official; and (ii) the purpose of said offer or intent is to induce an action or omission of the Government official relating to the duties vested in him/her. *See*, *Cohecho Activo, Elementos que Integran el Tipo Previsto en los Artículos 222 Fracción II de Código Penal Federal y 174 Fracción II del Código Penal Para el Estado de Michoacán*. 1ª/J.99/2001, published in the Judicial Weekly Gazette Book XIV, December 2001.
8. By contrast, the definition of 'bribery' contained in Article 66 of the Responsibilities Law as it relates to private parties, which as mentioned above will be enforceable through proceedings before administrative courts, does contemplate the situation where a Government official receives a bribe but does not act within his/her authority, and causes another official who does have the authority to act instead.

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