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Mexico's New Federal Anti-Corruption in Public Contracts Law

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Mexico's new federal Anti-Corruption in Public Contracts Law (the "Anti-Corruption Law") became effective on June 12, 2012. The Law establishes liabilities and penalties on foreign and Mexican individuals and corporations who directly or indirectly engage in actions or omissions aimed at achieving an unlawful advantage when procuring public contracts with the Mexican federal government. The Anti-Corruption Law also regulates the procedure for imposing sanctions and charges the Ministry of Public Administration (the "Ministry") with the responsibility for conducting investigations and with imposing sanctions under the law. An investigation of alleged violations of the Anti-Corruption Law may be commenced at the Ministry's sole discretion or based on a sworn statement filed by a government entity, public servant or person with relevant knowledge.

Key Provisions of the Anti-Corruption Law

The following is a partial list of actions or omissions which constitute a violation of the Anti-Corruption Law:

- Promising, offering or handing money or other gifts to a public servant or a third party so that the recipient may perform or refrain from performing an act in relation to his/her official duties, in order to obtain or retain a benefit or advantage with regard to the procurement of public contracts, regardless of whether the money or gift is accepted or the desired result is obtained.
- Performing acts or omissions with the purpose of bidding for a public contract if the individual or corporation is legally barred from the bidding process under the law or through an administrative order.
- Performing acts or omissions with the purpose of evading the requirements or rules established by the public contracting entities.
- Participating in the procurement of a public contract for the ultimate purpose of benefiting parties that are barred from the bidding process.
- Promoting or using any economic or political influence, real or fictitious, on a public servant, in order to obtain a benefit or advantage, regardless of whether the public servant accepts or the result is obtained.

Notably, liability will attach even if the unlawful conduct occurs through a third party or the money or gift is not accepted.

Individuals that violate the Anti-Corruption Law may be fined one-thousand to fifty-thousand times the daily minimum wage for Mexico City, and disqualified from entering into federal public contracts for a minimum of 3 months, and up to 8 years. As the current daily minimum wage is \$62.33 MXN (approximately \$4.45 in U.S. Dollars), the fines may range from (at current rates) MXN\$62,330.00 to \$3,116,500.00 (approximately USD\$4,452.14 to \$222,607.14).

In the case of legal entities (such as corporations), penalties will be contingent on the severity of the violation. The fines may reach up to two million times the daily minimum wage for Mexico City (approximately \$8,904,285.71 in U.S. Dollars), and the disqualification may range between 3 months and 10 years. The Ministry has complete discretion in determining the penalties which will be imposed on a case by case basis.

Notably the Anti-Corruption Law provides for a possible reduction of sanctions for parties who willingly confess to their participation in the unlawful conduct before the administrative sanctions procedure is commenced or even while it is under way.

Practical Considerations for Corporations

Given the reach of the Anti-Corruption Law, organizations should consider taking action as follows:

- Review the organization's code of conduct and internal policies to ensure that it reflects the company's commitment to a culture of integrity in which unlawful practices, such as bribery and corruption, are prohibited and penalized.
- Engage in due diligence to identify risks and screen third parties representing the organization in business dealings.
- Train all key personnel to ensure that they fully understand the Anti-Corruption Law as well as the organization's anti-corruption policies and procedures.
- Appoint a compliance team to monitor and review the organization's public contracts, in order to ensure compliance with the law and the organization's anti-corruption policies and procedures.

We are available to assist you with regard to your organization's efforts to comply with the Anti-Corruption Law.

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