

**GONZALEZ
CALVILLO**

The New Mexican Anti-corruption System
and how it may affect your company

December 2017

Agenda

- The Challenge
- The Solution?
- Impact on Private Entities
- What and What not to do?

The Challenge

First: What is corruption?

Many definitions, but essentially a dishonest action that destroys people's trust, involving the misuse of power (public or private) for one's own benefit.



The Challenge (cont'd)

Second: How bad is it?

Studies estimate:

- Economic cost of corruption per year between 2% and 10% of annual GDP.
- Companies lose around 5% of their annual sales due to corruption.
- Costs about 450,000 formal jobs per year.

Corruption comes in 3rd place of all the most pressing problems for Mexicans the most, with 48.5% holding this view – even ahead of poverty at 39.3%. This is only behind crime and security at 70.4% and unemployment at 51%

The Challenge (cont'd)

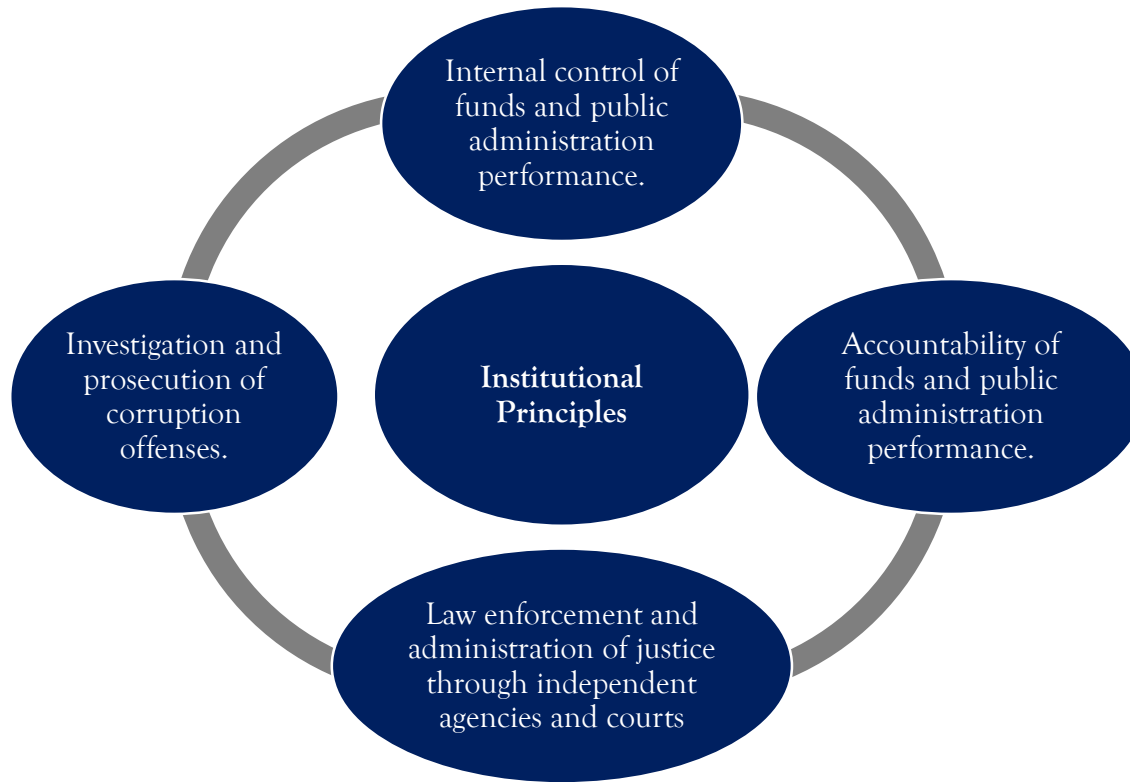
Third: More Public than Ever!

- Mass Media and Social Networks a material tool for release of corruption scandals.
- NGOs and Private Entities active in investigations and whistleblowing.

But. . . Is it worst that ever?

The Solution?

The New National Anti-Corruption System



The Solution? (cont'd)

Federal
Constitution

General Law of the National Anticorruption System
(*Ley General del Sistema Nacional de Anticorrupción*)

Audit and Accountability Law
(*Ley de Fiscalización y Rendición de Cuentas de la Federación*)

General Law of Administrative Responsibilities
(*Ley General de Responsabilidades Administrativas*)

Organic Law of the Federal Court of Administrative Justice
(*Ley Orgánica del Tribunal Federal de Justicia Administrativa*)

Amendments to the Organic Law of the Attorney General's Office
(*Ley Orgánica de la Procuraduría General de la República*)

Amendments to the Federal Criminal Code
(*Código Penal Federal*)

Amendments to the National Code of Criminal Procedures
(*Código Nacional de Procedimientos Penales*)

The Solution? (cont'd)

Key Features

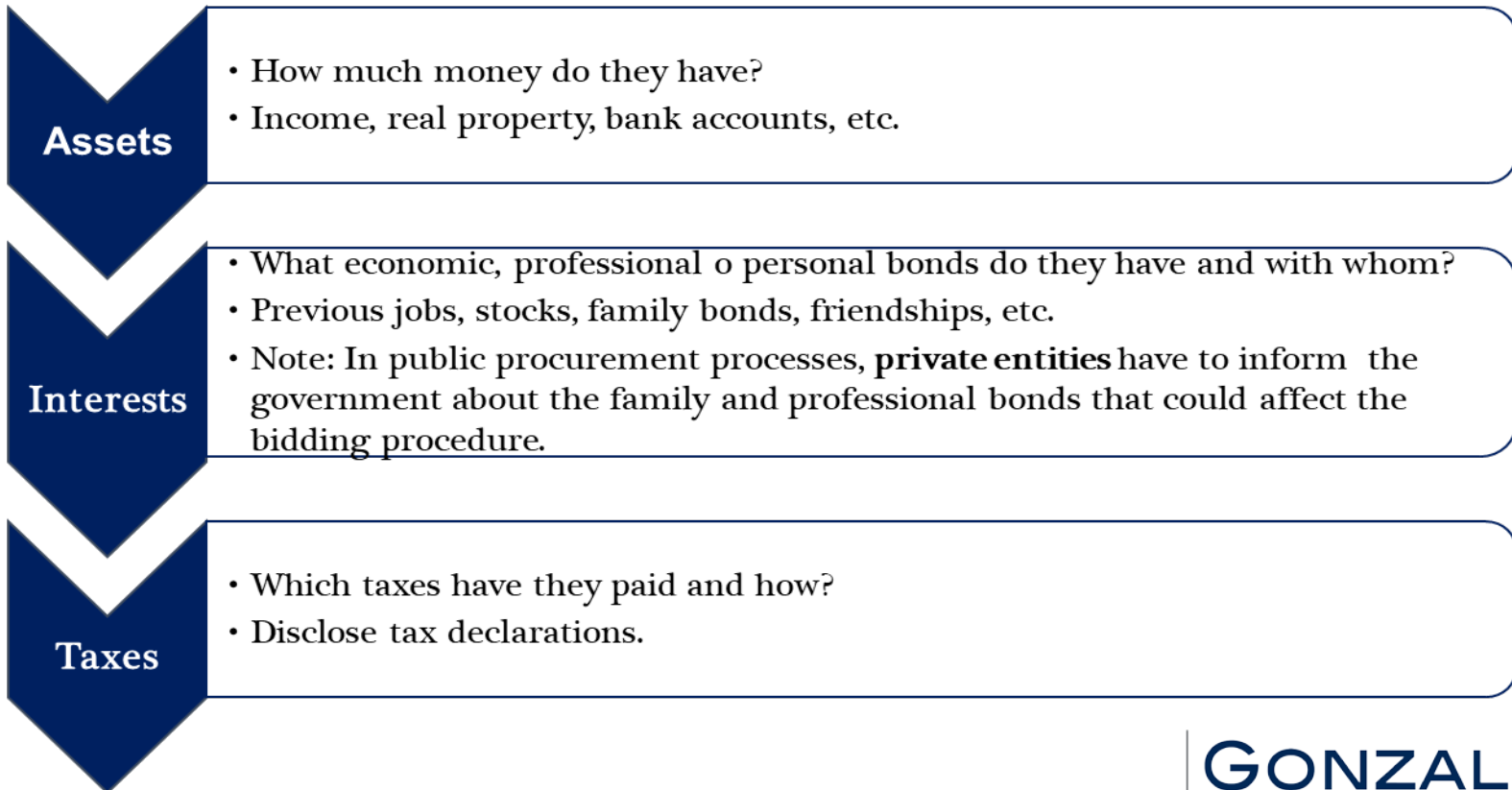
(a) New Powers for Authorities

- New Powers of the Federal Congress (*Congreso de la Unión*) ;
- New Powers of the Chief Audit Office (*Auditoría Superior de la Federación*);
- Creation of Independent General Attorney's Office for Anticorruption; and
- Creation of new areas of the Federal Court of Administrative Justice

The Solution? (cont'd)

Key Features

(b) Obligation to Submit information for Public Officials



The Solution? (cont'd)

Key Features

(c) Responsibility for Public Officers and...

Private Persons and Entities



Impact on Private Entities

The Reasons Behind the Change

- Regulate, strengthen, clarify and penalize administrative offenses that involve public officials and *private individuals*;
- Determine and clarify the basic monitoring, conduct, whistleblowing and transparency requirements for private businesses and individuals; and
- Shift from the current orientation to pursue only public officers for the sanctioned conducts, and seek responsibility from private individuals and entities

Impact on Private Entities (cont'd)

The Severe Offenses Aimed at Private Parties

	Description
Bribery	The illegal practice of -directly or through a third party- providing <u>anything of value to a public officer</u> , in order for him/her to obtain or retain business or an improper advantage.
Unlawful Participation in Administrative Proceedings	Consists in the illegal activities done by a private entity in order to participate in an administrative procedure regardless of not being entitled to do so.
Influence Peddling	The illegal practice of -directly or through a third party- use influence in government or connections with people in a position of authority in order to obtain a favor, undue advantage or preferential treatment
Use of False Information	Consists in the intentional presentation of false documentation in order to obtain a benefit or to harm another person.

Impact on Private Entities (cont'd)

The Severe Offenses Aimed at Private Parties (cont'd)

	Description
Obstruction of an Investigation	Delay or rejection to deliver to authorities information for an investigation related to administrative offenses
Collusion in Public Procurement	Consists in the activity performed by two or more private entities in order to obtain an unlawful advantage or profit in public procurement procedures.
Deviation of Public Resources	Consists in the appropriation, misuse of deviation of public funds, human or material resources when available to the private party and not specifically destined for the use authorized to the private party.
Improper Engagement of former Public Officers	Engaging of former public officers who have held office for the previous year, if such public officer possesses privileged information and allows the engager to benefit from it in the market or against its competitors.

Impact on Private Entities (cont'd)

The Sanctions

- Economic - 2 times the benefits obtained (or alternatively up to USD\$6 million for companies);
- Disqualification from participation in any public contract (up to 10 years for companies);
- Suspension of activities and commerce (for up to 3 years);
- Dissolution (when obtaining major benefits in the knowledge of shareholder or board members, or for systematic infringement);
- Indemnify the Governmental Authorities for damages and losses; and
- When the conduct also qualifies as criminal activities, potential prison for those determined responsible

Knowledge by Board Members or Shareholders can be aggravation factors in determining the application of these sanctions – especially important for affiliates and subsidiaries

Impact on Private Entities (cont'd)

... and how to mitigate them!

- First: collaborate, always!
- Second: Effective Compliance Program, *which shall always include:*
 - (i) Adequate Corporate Governance Manuals and Procedures;
 - (ii) Code of Conduct;
 - (iii) Proper Monitoring and Auditing Systems and disciplinary procedures (checks-and-balances structures);
 - (iv) Effective reporting (whistleblowing) mechanisms;
 - (v) transparency and publicity procedures

An effective Compliance Program, as well as proper collaboration with the Mexican authorities, can cause a significant reduction in the sanctions and penalties.

So, What and What Not to Do?

What and What Not to Do

Do you:



Close Down ?

What and What Not to Do

Do you:



Audit and Fire Everyone ?

What and What Not to Do

Do you:



Run Away from the Mexican Government?

What and What Not to Do

Do you:



Hide and Wait?

What and What Not to Do

...

NO WAY JOSE!

Here is what to do: DO NOT PANIC!

First: Understand how this applies to your business in Mexico

- Identify your specific points of interaction with the Mexican Government. Understand who you are dealing with;
- How much do your US based executives interact with Mexican operations? Do they interact with the Mexican Government at any level?
- Who is in charge of your government relationships in Mexico? What are they specifically doing?

Here is what to do:

Second: Act swiftly!

- Review your processes; perform proper due diligence; understand the potential issues and how to mitigate them;
- Do you have an effective Compliance/Control Program? – chances are if you are FCPA compliant, you will, but you need to make sure!
- Employ professionals, be properly counseled;
- Train your workforce *at every level*; help them understand, identify and act;



**GONZALEZ
CALVILLO**

Thank You!

December 2017

Our Firm, Clients and Team

- We have rewritten the full-service firm model by blending it with our transactional and deal-making core.
- Throughout the past 30 years, we have grown steadily while very selectively.
- We have a broad, solid and energetic partnership base of 20 and close to 80 dedicated lawyers comprising the legal team.
- Represent a blend of local and multinational clients across regulated and non-regulated industries, such as domestic and international financial institutions, governmental entities, companies, businesses and individuals, including a substantial number of Fortune 500 companies in a wide variety of practice areas.
- The firm's professionals encourage and incentivize a business vision to create benefit for our clients, with in-depth experience to proactively detect opportunities for them and assist in their development and implementation.
- Most of our lawyers have international legal studies in the United States or Europe and many of them have experience working as foreign associates in highly prestigious global law firms.

Practice Areas

- Anticorruption and Compliance
- Antitrust and Competition
- Arbitration and Mediation
- Banking and Finance
- Capital Markets
- Corporate Governance
- Data Protection
- Energy, Oil, Gas and Power Generation
- Environment and Natural Resources
- Franchising, Licenses and Distribution
- Government Procurement
- Intellectual Property
- Investment Protection and Management
- Joint Ventures and Strategic Alliances
- Labor and Employment
- Litigation
- Mergers and Acquisitions
- Private Equity
- Project Finance and Infrastructure
- Real Estate
- Regulatory
- Restructuring and Bankruptcy
- Securities
- Telecommunications