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General Law of Administrative Responsibilities: legal consequences for individuals and entities*

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In our last issue, we addressed the sanctions provided for in the General Law of Administrative Responsibilities (“GLAR”) in case of infringement by public officials. However, the GLAR has other important aspects, and one of the most relevant is the responsibility for private individuals and entities associated with acts of corruption and serious administrative offenses.

In this regard, we consider it relevant to offer an explanation of such acts and the applicable sanctions, which may even include, in extreme cases, the dissolution of companies, as well as the mitigating factors under which such responsibility may be reduced.

Separate sanctions for individuals and entities

In terms of the GLAR, companies and individuals shall be penalized when they carry out acts associated with serious administrative offenses committed by public officials. This means that, in addition to individual sanctions, entities will also be punished, irrespective of the responsibility of those who acted on their behalf or for their benefit.

Moreover, the GLAR provides that liability of individuals and companies shall be determined independently of the involvement of a public official in the offenses.

Punishable acts of private individuals and entities

Infractions that the GLAR considers linked to serious administrative offenses and therefore subject to sanctions are as follows:

1. Bribery

Promising, offering or delivering any undue benefit (money, assets, property, services, jobs, etc.) to one or more public officials in exchange of performing or omitting to perform any action related to their office or that of another public service in order to gain a benefit, or to abuse their influence for that purpose.

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2. Unlawful involvement in administrative proceedings

Performing any action or omission to take part in administrative proceedings where the individual or entity is forbidden or prevented from doing so or intervening on his behalf in such proceedings, but in the interest of a third party unable or prevented to participate.

3. Influence peddling

Using their influence, economic or political power over any public official to obtain a benefit or advantage for themselves or a third party.

4. Use of false information

Submitting false or altered documentation or simulating compliance with requirements or rules outlined in administrative proceedings to obtain an authorization or benefit, or to harm a third party.

5. Obstruction of investigative powers

In the case of investigations regarding administrative offenses, providing false information, unjustifiably delaying its delivery or failing to respond to requests of the authority, prior imposition of the appropriate measures of constraint.

6. Collusion

Carrying out, together with one or more individuals or entities, any action aimed at obtaining undue profits in public procurement, as well as to conclude contracts or agreements between competitors to secure undue advantages.

This also applies to international transactions, that is, any procedure relating to contracts for acquisition, lease, services, and public works, as well as permits, concessions or authorizations in charge of any foreign public agency or official.

7. Misuse of public resources

Diverting, misusing or appropriating public resources, or disregarding the obligation to render account for the use of such resources.

8. Improper recruitment of former public officials

Hiring an individual who has been a public official during the previous year, whose privileged information may unlawfully benefit the employer.

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It is important to note that the Federal Republican Austerity Law, published on November 19 in the Federal Official Gazette, provides in article 24 that public officials in the highest hierarchical groups (as referred in the wages manual included in the Federal Law on Budget and Treasure Responsibility) that for any reason leave their office, will not be able to hold positions in companies which they have supervised, regulated or of which they had access to privileged information due to their office unless a period of at least 10 years has elapsed from the date they left their office.

It should be mentioned that the investigation of such misconducts may be initiated ex officio, by complaint or from the evidence gathered in audits carried out by the authority or external auditors.

On the other hand, if there is a risk that those responsible will flee or dispose of or hide their property, a precautionary seizure will proceed at any stage of the proceedings.

Sanctions

The administrative sanctions provided for in the GLAR for offenses of private individuals and entities are as follows:

1. Individuals

- a) Financial penalty, which may be up to twice the profits obtained. In the absence of benefits, the equivalent of 100 and up to 150,000 times the daily value of the Unit of Measure and Update (UMA) .
- b) Disqualification to participate in public procurement from 3 months to 8 years.
- c) Compensation for damages to the Treasury or the assets of public entities.

2. Entities

- a) Financial penalty, which may be up to twice the profits obtained. In the absence of benefits, the equivalent of 1000 and up to 1,500,000 times the daily value of the UMA.
- b) Disqualification to participate in public procurement from 3 months to 10 years.

* Up to \$12,673,500.00 MXN.

** Up to \$126,735,000 MXN.

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- c) Suspension of business activities for no less than 3 months and no longer than 3 years.
- d) Dissolution of the company.
- e) Compensation for damages caused to the Treasury or the assets of public entities.

Suspension of business activities and, where appropriate, dissolution, shall apply only if it is established that the company has obtained an economic benefit and that its administrative or supervisory bodies, or its partners, have been involved in the offenses, or where it is determined that the company has been systematically used to commit such acts.

In turn, financial penalties will constitute tax credits subject to enforcement and execution proceedings by the Tax Administration Service.

It is important to note that the above sanctions are independent of other penalties provided for in the Federal Criminal Code, the National Asset Forfeiture Law or the Federal Anti-trust Law, among others.

Mitigating and aggravating factors

Administrative sanctions against entities may be mitigated where its partners or its administrative, supervisory or representative bodies cooperate in the investigations and compensate for damages caused.

On the other hand, where any person belonging to the company, or its administrative, supervisory or representative bodies fail to report acts of corruption carried out by any of its members shall be regarded as an aggravating circumstance.

Reduction of penalties and compliance

For individuals, penalties will be reduced where the offender confesses his or her responsibility. Such reduction may be of between 50% and 70% of the total financial penalty, and up to the total in the case of disqualification, provided that all legal requirements are met.

For entities, the GLAR provides that a reduction in their responsibility and sanctions may apply if they have an integrity policy, which is nothing but a compliance program, as long as it includes at least the following elements:

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- » Organization manual and procedures for each area, specifying the different chains of command.
- » Code of conduct and enforcement mechanisms duly publicized within the organization.
- » Systems for the control, monitoring, and auditing of integrity standards.
- » Internal and external complaint systems, as well as disciplinary proceedings.
- » Training processes and integrity measures.
- » Non-discriminatory human resources policies that nevertheless prevent the incorporation of people who may jeopardize the integrity of the organization.
- » Mechanisms to ensure transparency and publicity of the interests of the company

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