



CORPORATE LIABILITY FOR CORRUPTION OFFENCES IN LATIN AMERICA

ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND DEVELOPMENT



ORGANISATION DE
COOPÉRATION ET
DE DÉVELOPPEMENT
ÉCONOMIQUES

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INTRODUCTION

1. Enacting and enforcing corporate liability legislation remains, for States Parties to international anti-corruption conventions,¹ one of the single greatest challenges to implementing an effective framework to prevent and punish corruption. Emerging case law involving cross-border corruption indicates that corporate entities, such as foreign subsidiaries, frequently act as vehicles for bribery. The use of elaborate financial frameworks and accounting techniques to conceal illegal transactions is also common. In addition, complex corporate structures, decentralised and global business operations and multiple layers of managerial authority make it difficult to attribute responsibility for wrongdoing to a particular person or persons.

2. Yet, establishing an effective corporate liability regime is integral in the fight against corruption. The ability to hold companies liable—and not just individuals—sends a clear message that ‘corruption is not just part of doing business.’

3. Pursuant to Article 2 of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (Anti-Bribery Convention) and to Article 26 of the UN Convention against Corruption (UNCAC), each Party is required to take ‘such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons’ for the bribery of a foreign public official and other corruption offences. The liability of legal persons may be criminal, civil or administrative. Article VIII of the InterAmerican Convention against Corruption (ICAC) requires States Parties to ‘prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, *and businesses domiciled there*, to a government official of another State’(emphasis added). A sound corporate liability framework can also enable a country to more effectively combat money laundering, provide mutual legal assistance and confiscate the instruments and proceeds of crime.

4. This compilation brings together the international standards on corporate liability for corruption, with examples of national legislation designed to hold companies liable for corruption offences, in either an administrative, civil or criminal context. The legislative extracts have been taken from reviews by the OECD Working Group on Bribery (WGB), the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC) or the TRACK Legal Library of the United Nations Office on Drugs and Crime. The appearance of the legislative extracts in this compilation should not, however, be considered as an endorsement of their effectiveness. This compilation is instead designed as a reference for countries planning to amend their existing corporate liability framework, or to introduce corporate liability—administrative, civil or criminal—for the first time, noting that corporate liability frameworks must to be tailored to the specific characteristics of the legal system in question.

¹ For example Article VIII (Transnational Bribery) of the InterAmerican Convention against Corruption (IACAC; 1997), Article 2 (Responsibility of legal persons) of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (ABC; 1999) and Article 26 (Liability of legal persons) of the United Nations Convention against Corruption (UNCAC; 2003).

THE INTERNATIONAL LEGAL FRAMEWORK FOR CORPORATE LIABILITY FOR CORRUPTION OFFENCES

INTERAMERICAN CONVENTION AGAINST CORRUPTION

Article VIII, Transnational Bribery

Subject to its Constitution and the fundamental principles of its legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions.

Among those States Parties that have established transnational bribery as an offense, such offense shall be considered an act of corruption for the purposes of this Convention.

Any State Party that has not established transnational bribery as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.

OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS

Article 2, Responsibility of Legal Persons

Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.

Commentary 20

In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall not be required to establish such criminal responsibility.

Annex I: Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

B) Article 2 of the OECD Anti-Bribery Convention: Responsibility of Legal Persons

Member countries' systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should not restrict the liability to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted.

Member countries' systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should take one of the following approaches:

- a. the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons; or
- b. the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level managerial authority, because the following cases are covered:

A person with the highest level managerial authority offers, promises or gives a bribe to a foreign public official;

A person with the highest level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official; and

A person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures

C) Responsibility for Bribery through Intermediaries

Member countries should ensure that, in accordance with Article 1 of the OECD Anti-Bribery Convention, and the principle of functional equivalence in Commentary 2 to the OECD Anti-Bribery Convention, a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to offer, promise or give a bribe to a foreign public official on its behalf.

UN CONVENTION AGAINST CORRUPTION

Article 26. Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

CORPORATE LIABILITY FOR CORRUPTION OFFENCES IN LATIN AMERICAN COUNTRIES²

BELIZE

Prevention of Corruption Act, 2007

Section 22:

- (1) A person who, by himself or in conjunction with any other person, or an agent, engages or attempts to engage in any of the acts specified in Part 1 of the Third Schedule commits an act of corruption;
- (2) Any person who commits an act of corruption commits an offence and is liable:
 - (a) on summary conviction:
 - (i) in the case of a first offence, to a fine not less than ten thousand dollars; and
 - (ii) in the case of a second or subsequent offence, to a fine not less than twenty thousand dollars or to imprisonment for a period not exceeding two years or to both fine or imprisonment,
 - (b) on conviction on indictment:
 - (i) in the case of a first offence, to a fine not less than twenty-five thousand dollars or to imprisonment for a period not exceeding two years or to both fine and imprisonment; and
 - (ii) in the case of a second or subsequent offence to a fine not less than fifty thousand dollars or to imprisonment for a period not exceeding three years or to both fine and imprisonment.”

Section 1(e) of the Third Schedule,

a person commits an act of corruption if “he being a natural person or a corporation, either aggregate or sole, club, society or other body of one or more persons, offers or grants, directly or indirectly to a person performing public functions in a foreign State, any article or money or other benefit, being a gift, favour, promise or advantage in connection with any economic or commercial transaction for an act to be performed or omitted by that person in the performance of his public functions.”

CANADA

Criminal Code (R.S.C., 1985, c. C-46)

Other offences — organizations

Section 22.2. In respect of an offence that requires the prosecution to prove fault — other than negligence — an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers

- (a) acting within the scope of their authority, is a party to the offence;

² Unofficial translation of extracts from relevant legislation. Information taken from evaluations by the OECD Working Group on Bribery; completed Third Round reports by the OAS Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC) and the TRACK Legal Library of the United Nations Office on Drugs and Crime (<http://www.track.unodc.org/LegalLibrary>). Countries that have not yet introduced corporate liability for corruption offences include: Antigua and Barbuda; Argentina; Bahamas; Barbados; Bolivia; Brazil; Costa Rica; Dominica; Ecuador; Grenada; Guyana; Haiti; Honduras; Paraguay; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Suriname; Trinidad and Tobago; Uruguay and Venezuela. Emphasis added.

- (b) having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or make the omission specified in the offence; or
- (c) knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.

CHILE

Law on Criminal Responsibility of Legal Persons

Article 1. Contents of the Act. This Act regulates the criminal responsibility of legal persons in respect of offenses mentioned in Article 27 of Act No. 19,913, Article 8 of Act No. 18,314 and Articles 250 and 251bis of the Criminal Code, the procedure for the investigation and establishing of such criminal responsibility, the determination of applicable penalties and the enforcement thereof.

As to those matters not covered by this Act the provisions contained in Book I of the Criminal Code and in the Criminal Procedure Code, and in the special laws set forth in the preceding indent, where appropriate, shall apply.

For the purpose of this Act, Article 58, indent 2, of Criminal Procedure Code shall not apply.

Article 2. Scope. The provisions of this Act shall apply to private legal persons and to State companies.

Chapter I. Criminal Responsibility of Legal Persons.

1. Attachment of criminal responsibility to legal persons.

Article 3. Attachment of criminal responsibility. Legal persons shall be responsible for the offenses listed in Article 1, when directly and immediately committed in their own interest or for their own benefit by their owners, controllers, responsible officers, principal executives officers, representatives or those conducting activities of administration and supervision, provided that the commission of the offense results from the breach of the legal person's direction and supervisory functions.

Under the same assumptions of the preceding indent, legal persons shall also be responsible for the offenses committed by individuals who are under the direction or supervision of any of the subjects mentioned in the preceding indent.

It shall be considered that the functions of direction and supervision have been met if, before the commission of the offense, the legal person had adopted and implemented organization, administration and supervision models, pursuant to the following article, to prevent such offenses as the one committed.

Legal persons shall not be responsible in the event that the individuals mentioned in the preceding indents have committed the offense exclusively in their own advantage or in favour of a third party.

Article 4. Offenses prevention model. For the purpose of the third indent of the preceding article, legal persons may adopt the prevention model referred to therein, which shall contain at least the following elements:

- (1) Appointment of a person responsible for the prevention model.

(a) The maximum administrative authority of the legal person, whether its board of directors, an administrating partner, manager, a principal executive officer, an administrator, a liquidator, its representatives, owners or partners, as appropriate to the form of administration of the legal person, hereinafter “the Administration of the Legal Person”, shall appoint a prevention officer, who shall remain in office for up to three years, renewable for equal periods.

(b) The prevention officer shall be autonomous from the Administration of the Legal Person and from its owners, partners, shareholders or controllers. Notwithstanding, he may perform control or internal audit functions. In the case of legal persons whose annual income does not exceed one hundred thousand “unidades de foment”, the owner, partner or controlling shareholder may personally undertake the functions of the prevention officer.

(2) Definition of means and faculties of the prevention officer.

The Administration of the Legal Person shall provide the prevention officer with sufficient means and faculties for the performing of his functions, including at least the following:

(a) The material means and resources necessary to conduct his functions properly, taking into consideration the size and economic capacity of the legal person;

(b) Direct access to the Administration of the Legal Person to promptly inform it, through appropriate channels, on the implemented measures and plans in the accomplishment of his mission, and to render account of his management at least half-yearly.

(3) Establishment of an offenses prevention system.

The prevention officer shall, in conjunction with the Administration of the Legal Person, establish an offenses prevention system for the legal person, which shall at least contemplate the following:

(a) Identification of the activities or processes of the entity, whether habitual or sporadic, in the context of which the risk of committing offenses listed in article 1 emerges or increases.

(b) Establishment of specific protocols, rules and procedures that permit to persons involved in the activities or processes indicated in the foregoing letter “(a)”, to program and implement their tasks or functions in a manner that prevents the commission of the said offenses;

(c) Identification of the procedures for administrating and auditing the financial resources that permit the legal person to prevent their use in the commission of the aforementioned offenses;

(d) The existence of internal administrative sanctions, as well as the procedures for reporting or pursuing pecuniary responsibility against the persons who fail to comply the offenses prevention system.

These internal obligations, prohibitions and sanctions shall be stated in the regulations to be adopted by the legal person to that effect, and shall be communicated to all workers. This internal regulation shall be expressly incorporated in the respective employment contracts and agreements on rendering services of all workers, employees and suppliers of services of the legal person, including its maximum executive officers.

(4) Supervision and certification of the offenses prevention system.

(a) The prevention officer shall, in conjunction with the Administration of the Legal Person, establish methods for the effective application of the offenses prevention model and its supervision, so as to detect

and correct its failures and to update it according to the change of circumstances of the respective legal person.

(b) Legal persons may obtain certification of the adoption and implementation of its offenses prevention model. Such certificate shall attest that the model meets all the requirements set forth under numbers (1), (2) and (3) above, in connection with the situation, size, scope of business, level of income and complexity of the legal person. Certificates may be issued by external auditing companies, risk rating societies or other entities registered with the Securities and Insurance Superintendence, which are able to perform this function in accordance with the regulations established by the aforementioned Comptroller Organ, to for this purposes.

(c) It shall be understood that individuals participating in certification activities conducted by the entities mentioned in the preceding letter “(b)” perform a “public function” in terms of article 260 of the Criminal Code.

Article 5. Autonomous Criminal Responsibility of the Legal Person. The Responsibility of the legal person shall be autonomous from the criminal responsibility of individuals, and shall subsist where the requirements prescribed by article 3 are present and, in addition, one of the following situations takes place:

(1) Individual criminal responsibility shall have extinguished in accordance with numbers 1 and 6 of Article 93 of the Criminal Code.

(2) In the criminal proceeding instituted against individuals set forth in the first and second indent of article 3, temporary dismissal of the alleged offender or alleged offenders is decreed according to the grounds set forth in letters “(b)” and “(c)” of article 252 of the Criminal Procedure Code.

Such responsibility may also be prosecuted when, having proved the existence of any of the offenses of article 1, and the other requirements prescribed by article 3 have met, it has not been possible to establish the participation of the responsible individual or individuals, provided that it is irrefutably proved in the respective proceeding that the offense must have been necessarily committed in the scope of the functions or faculties proper to the persons mentioned in the first indent of the said article 3.

Chapter II. Consequences of the Declaration of Criminal Responsibility of the Legal Person

1. Penalties in general.

Article 8. Penalties. Legal persons shall be subject to one or more of the following penalties:

(1) Dissolution of the legal person or cancellation of its legal status;

This penalty shall not apply to State companies or to private legal persons that provide a public utility service the interruption of which might cause grave social and economic consequences or serious damage to the community as a result of the application of such penalty.

(2) Permanent or temporary prohibition from entering into acts and contracts with State organs;

(3) Partial or total loss of fiscal benefits, or absolute prohibition from receiving the same for a specified period of time;

(4) Fine for fiscal benefit;

(5) The ancillary penalties prescribed by article 13.

Article 9. Dissolution of the legal person or cancellation of its legal status. Dissolution or cancellation will result in permanent loss of status of a legal person. The judgment decreeing dissolution or cancellation of a legal person shall, according to its type or legal nature and in the absence of an express legal provision to govern it, designate the liquidators in charge of liquidating it. Likewise, and in equal conditions, it shall entrust them with the execution of acts or contracts necessary to:

(1) Conclude every activity of the legal person, except for those being required for the success of liquidation;

(2) Pay the liabilities of the legal person, including those deriving from the commission of the offense. The terms of these debts shall be understood to have expired by operation of law, thus becoming immediately payable and its payment shall be made in full respect of the preferences and credit precedence established by Chapter XLI, Book IV of the Civil Code, particularly the rights of workers of the legal person, and

(3) Distribute the remaining property among the shareholders, members, owners or proprietors pro rata their respective interest. The foregoing shall be understood without prejudice to the right of the affected persons to proceed against the offenders for obtaining any reparation for damages. In case of stock corporations, the provisions of article 133bis of Act No. 18,046 shall apply.

However, where the social interest so warrants, the judge may, by a grounded resolution, order the disposal of all or part of the assets of the dissolved legal person, as a set or economic unit at a public auction and to the best bidder. This shall take place before the judge himself. This penalty may be imposed only in cases of crimes where the aggravating circumstance established in article 7 is present. Likewise, it may be applied when convicting for crimes committed repeatedly according to the provisions of article 351 of the Criminal Procedure Code.

Article 10. Prohibition to engage in acts and contracts with State organs. This prohibition consists in the loss of the right to participate as supplier of goods and services to State organs.

To determine this penalty, the Court shall abide by the following scale:

(1) Permanent prohibition to enter into acts and contracts with State organs.

(2) Temporary prohibition to enter into acts and contracts with State organs. Its duration shall be rated as follows:

(a) Lowest degree: two to three years;

(b) Medium degree: three years and one day to four years;

(c) Highest degree; four years and one day to five years.

Such prohibition shall apply from the date on which the judgment becomes enforceable. The Court shall give notice of this circumstance to the Directorate for Public Procurement. Such Directorate shall keep an updated register of legal persons to which it has been imposed this penalty.

COLOMBIA

Law 1474 of 2011

Article 34 – Measures against legal persons. Regardless of individual criminal liability that might arise, the measures referred to in Article 91 of Law 906 of 2004 shall apply to legal persons who have sought to benefit from the commission of crimes against public administration, or any criminal offence related with public property, made by its legal representative or managers, directly or indirectly.

In crimes against public administration or affecting public property, possibly affected State entities may require as third-party civil liable the legal persons who have participated in their commission.

In accordance with the provisions of Article 86 of Act 222 of 1995, the Superintendence of Corporations may impose fines ranging from five hundred (500) to two thousand (2000) current monthly minimum wages, when with the consent of his legal representative or any of their managers or with their tolerance, the corporation has participated in the commission of an offence against the public administration or against public property.

Criminal Procedure Code

Article 91 – Suspension and cancellation of the legal status. At any moment before the Indictment, on petition of the office of the prosecutor, the judge with functions of guarantee control can order the competent authorities to proceed with the cancellation of the legal status or the temporary closure of the shops or establishments of legal or natural persons, subject to prior fulfilment of the requirements established by the law, whenever there are well founded motives to infer that they have been totally or partially used in criminal activities.

The above cited measures will be made final in the conviction sentence whenever there is proof beyond a reasonable doubt of the circumstances that created them.

DOMINICAN REPUBLIC

Law 448-06, on Bribery in Commerce and Investments

Article 4. Any person, physical or legal, subject to the jurisdiction of the Dominican Republic, who intentionally offers, promises, or grants, whether directly or indirectly, a foreign government official any object of financial value or other benefit, such as a favour, promise, or advantage for said official or another person, so that said official might perform or omit any act pertaining to their official duties, in matters that affect international trade or investment, shall be deemed to have committed the offence of transnational bribery.

Article 6. If the briber, pursuant to Articles 3 and 4 of this Law, is a legal person, they shall be punished with closure or intervention for two (2) to five (5) years and a fine of twice the rewards offered, promised, or granted, although in no case shall the fine be less than seventy-five (75) times the minimum wage.

Paragraph I. In addition to the fine imposed on the briber under this article, the officers of the aforesaid legal person shall be liable to the penalties set forth in Article 5 of this law.

Paragraph II.- In cases of recidivism, a sentence shall be imposed of closure or intervention for a period of five (5) to ten (10) years or permanent closure, and a fine of four times the rewards offered,

promised, or granted, although in no case shall the fine be less than one hundred (100) times the minimum wage.

EL SALVADOR

Criminal Code

Article 38. A person serving as the director or manager of a corporate entity, or acting in the name of another or in the legal or voluntary representation of another, shall respond personally, even though he does not meet the conditions, qualities, or relations that the definition of the corresponding offense requires to be considered an active subject, when those circumstances exist within the entity or person in whose name or representation he is acting.

In any event, the corporate entity shall incur in special subsidiary civil liability. Irrespective of the foregoing, in cases of personal exaction, third-party exaction, active bribery, and transnational bribery, the corporate entity shall be jointly responsible for the harm inflicted pursuant to the terms of Art. 118 of this Code.

GUATEMALA

Criminal Code

Article 38. Legal persons shall be deemed responsible for crimes in which their respective directors, managers, officers, agents, directors, officers or employees took part, and without whose participation the crime would not have been carried out, and shall be punished with the same penalties prescribed in this Code for individuals.

Article 442-bis. Active Transnational Bribery. Any person subject to Guatemalan law who offers a gift or present, or who promises or extends any monetary or other form of advantage, either directly or indirectly, to public officials of another state or international organization, for that official or for another person to act or to refrain from acting in the performance of his functions, to obtain or retain business or other undue advantage of an economic or commercial nature, shall be liable to a punishment of between four (4) and ten (10) years in prison and a fine of between fifty thousand (Q. 50,000.00) and five hundred thousand (Q. 500,000.00) quetzals.

Any individual who assists, collaborates in, encourages, incites, instigates, promotes, or conspires in the commission of the acts described in the previous paragraph indirectly and who is identified as an accomplice of the aforesaid acts shall be liable to the sanction indicated therein reduced by one third.

Should a corporate entity participate in the activities described in the first paragraph, through the people identified in Article 38 of the Criminal Code, seeking benefits for that corporate entity, in addition to the sanctions applicable to the participants in the crime, the corporate entity shall receive a fine of between one hundred thousand quetzals (Q. 100,000.00) and seven hundred and fifty thousand quetzals (Q. 750,000.00) or of twice the amount of the benefit obtained, whichever is greater, and, in the event of a repeat offense, the irrevocable cancellation of the corporate entity's trading license shall be ordered.

People who in good faith report the acts described in this article shall be protected by the competent authorities, in accordance with the current legislation.

JAMAICA

Corruption Prevention Act

Section 14(4). Any citizen or resident of Jamaica or any corporation, either aggregate or sole, any club, society or other body of one or more persons, who offers or grants, directly or indirectly, to a person performing a public function in a foreign state, any article or money or other benefit, being a gift, favour, promise or advantage in connection with any economic or commercial transaction for any act to be performed by or for the omitting to do any act by that person in the performance of that person's public functions, commits an act of corruption.

Section 14(9). Where a citizen of Jamaica commits in another State, an act of corruption specified in subsection (1), (2), (3), (4), (5), (6), (7), or (8), he shall be liable to be prosecuted and tried for such act as if he had committed the act in Jamaica.

- Section 15(1).** Any person who commits an act of corruption commits an offence and is liable
- (a) on summary conviction in a Resident Magistrate's Court –
 - (i) in the case of a first offence to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and
 - (ii) in the case of a second or subsequent offence to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment;
 - (b) on conviction in a Circuit Court-
 - (i) in the case of a first offence to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; and
 - (ii) in the case of a second or subsequent offence to a fine not exceeding ten million dollars or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

MEXICO

Federal Penal Code

Article 11. When a member or a representative of a legal entity, partnership, corporation or company of any kind, except the institutions of the State, commit a crime using the means that said entities provide him/her for that purpose, in a way that the crime be committed in the name of, or under the protection the entity or for its benefit, the Court shall have the authority, under the cases exclusively specified by the law, to order within the sentence the suspension or the dissolution of the entity if he deem it necessary for the sake of public security.

Federal Anticorruption Law in Public Procurement

Chapter First: General Stipulations

Article 1. The Law hereby is of public order and general interest and has the purpose of:

- I. Set the responsibility and penalties of persons and companies, national and foreign, for the irregular conducts foreseen in this Law in which they incur with the motive of their participation in federal public procurement, as well as the national persons and companies for their irregular conduct in international commercial transactions, and
- II. Regulate the procedure to determine the responsibilities and apply the penalties, and.

III. Set the competent federal authorities to interpret and apply this Law.

Article 2. The subjects of the Law hereby are:

I. The persons or companies, national or foreign, who participate in the federal public procurement, in their capacity or interested parties, bidders, convened, suppliers, awarded parties, contractors, licensees, concessionaires or similar;

II. The persons or companies, national or foreign, who in their capacity of stockholders, partners, associates, representatives, constituents or attorneys in fact, representatives, commission agents, managers, advisors, consultants, subcontractors, employees or that in any other capacity intervene in the public procurement subject of the Law hereby and who instead or on behalf or in the interest of the persons to which the item above refers, and

III. The national persons or companies who participate, directly or indirectly, in the development of international commercial transactions under the terms of the Law hereby, and

IV. The public servants who participate, directly or indirectly, in the public procurement of federal character, which will be subjects of responsibility in terms of the Title IV of the Constitution of the United Mexican States.

Article 3. For the effects of the Law hereby, it will be understood by:

I. **Competent authorities:** The Secretariat, the directors of the Control Internal Organs and the directors of their respective complaint and responsibilities areas, as well as the organs that for such effect are determined by the Senators Chamber and the Deputies Chamber of the Congress of the Union, the Supreme Court of Justice of the Nation and the Council of the Federal Judiciary, The Electoral Tribunal of Judicial Power of the Federation, The Federal Court of Fiscal and Administrative Justice, the Federal Court of Conciliation and Arbitration, the agrarian courts, The Federal Electoral Institute, The Federation Superior Auditor's Office, The Human Rights National Commission, The National Statistics and Geography Institute, The Bank of Mexico and all other public organs, under the terms established by Articles 4 and 5 of the Law hereby;

II. **CompraNet:** the public government information electronic system to which the Acquisitions, Leasing and Services of the Public Sector, and of Public Works and Related Services laws;

III. **Federal public procurement:** the previous acts, the procurement procedures, as well as any other act or procedure derived from the celebration, execution and accomplishment of contracts in matter of acquisitions, leasing, services, public works and services related to the same, conducted by the public procurement institutions referred in section VIII of this Article, under the terms of legal ordinances on public procurement and independently of the special arrangements of procurement or of the scheme used for its realization. Be considered included the acts and proceedings relating to competition or bidding of request for granting permits and concessions of federal character of their extension, as well as any other authorization or procedure relative to public procurement;

IV. **International conventions for the prevention and combating corruption:** The Inter-American Convention against Corruption of the Organisation of American States, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development and the United Nations Convention against Corruption, and the other in terms of the applicable legal provisions are underwritten by the Mexican State in the matter;

V. **Departments:** the State Secretariats and their decentralized organs, as well as the Legal Consultant's Office of the Federal Executive and the administrative units of the Presidency of the Republic;

VI. **Entities:** the public decentralized organisms, the companies of majority state participation and the public trusts having the character of public sector entities referred to in Articles 30, 45, 46 and 47 of the Organic Law of the Federal Public Administration;

VII. **Non public sector public trusts:** the public trusts constituted by the Secretariat of Finance and Public Credit, in its character of single trust grantor of the Centralized Federal Public Administration or some entity of the Public Sector Administration under the terms of the applicable legal and administrative stipulations, and which are considered public sector entities;

VIII. **Public procurement institutions:** the departments and entities of the Federal Public Administration; the non-public sector public trusts and the mandates and similar contracts; the General Attorney Office; the federative entities, the municipalities, including their public bodies, as well as the political administrative organs of the territorial districts of the Federal District which make public procurement with total or partial charge to federal funds, under the terms of the applicable legal stipulations, as well as the areas or competent of the authorities referred to in sections II to XI of Article 4 of the Law hereby; responsible for the procurement of federal character;

IX. **Intermediary:** the persons referred to in section II of Article 2 of the Law hereby;

X. **Mandates and similar contracts:** the mandates and similar contracts executed by the departments, entities, and if applicable, the General Public Prosecution Office, in terms of the applicable legal and administrative stipulations involving federal public resources;

XI. **Legal ordinances on the subject of public procurement:** the Law of Acquisitions, Leasing and Services of the Public Sector; the Law of Public Works and Related Services; the Law of Petróleos Mexicanos and all other legal instruments that establish a regime, scheme or special mechanism in public procurement;

XII. **Internal Control Organs:** the internal control organs of the departments and entities, as well as the General Attorney Office;

XIII. **General Attorney Office:** the General Attorney Office of the Republic;

XIV. **Secretariat:** Ministry of Public Administration;

XV. **Foreign public official:** every person who holds or occupies a job, position or public commission considered as such by the respective law, in the legislative, executive or judiciary organ of a foreign State, including the independent autonomous agencies or companies or of state participation, in any order or level of government, as well as any public international organism or organization, and

XVI. **International commercial transactions:** the procurement acts, procedures and any other derived from them, including those relative to entering, execution and compliance of contracts on the subject of acquisitions, leasing, services of any nature, public works and services related to the same; acts and procedures relative to the awarding or extension of permits and concessions are included, as well as any other authorization or procedure relative to such transactions by a foreign State, or international public organization, as well as any other authorization or procedure relative to such transactions conducted by any

public body or agency of a foreign State, or involving the participation of a foreign public official and whose development involved, directly or indirectly, persons or companies of Mexican nationality.

Chapter Second: Infringements

Article 8. Any of the subjects referred to in sections I and II of Article 2 or the Law hereby, will incur in responsibilities when in the federal public procurement, directly or indirectly, performs the following conducts:

I. Promises, offers or gives money or any other gift to a public official or to a third party determined by him, with the purpose that such public official makes or abstains from making an act relative to his activities or with those of another public official, with the aim of obtaining or maintaining a benefit or advantage, independently of the acceptance or receipt of money or gift or the result obtained.

It will also incur in responsibility when the promise or offering of any gift is made to an individual, who intervenes in any manner in the design or elaboration of the official notification of the public bid or any other act relative to the federal procurement procedure;

II. Executes with one or more subjects referred to the Article 2 of the Law hereby, actions that imply or have the aim or effect the obtaining an improper benefit or advantage in the federal public procurement;

III. Performs acts or omissions that have the aim or effect participate in federal public procurement, regardless that by the stipulation of the law or administrative resolution he is disabled to do it;

IV. Performs acts or omissions that have the aim or effect evade the requirements or regulations established in the federal public procurement or simulate the accomplishment of these;

V. Intervenes in his own name but in the interest of another person or persons who are disabled to participate in federal public procurement, with the aim that they obtain, totally or partially, the benefits derived from the procurement;

VI. Obligates without having the right to do so, a public official to give, sign, grant, destroy or deliver a document or some good, with the aim of obtaining for himself or for a third party an advantage or benefit;

VII. Promotes or uses his influence, power economic or political, real or fictitious, over any public official, with the aim of obtaining for himself or a third party a benefit or advantage, independently of the acceptance of the public official or officials or the result obtained, and

VIII. Presents false or altered documentation or information with the aim of achieving a benefit or advantage.

When the infringements were made through an intermediary with the aim of that an individual or company referred to in section I of Article 2 of the Law hereby to obtain some benefit or advantage in the applicable public procurement, both will be penalized previous administrative procedure that is substantiated in the terms of the Law hereby.

Article 9. The subjects referred to in section III of Article 2 of the Law hereby will incur in responsibility, when in any international commercial transaction, by themselves or through a third party, promise, offer or give money or any other improper gift, to a foreign public official or to a third party determined by him, with the aim of such public official performs or abstains from performing an act

relative to his activities or with those of another foreign public official, with the end of obtaining or maintaining a benefit or advantage independently or the acceptance or the result obtained.

When the Mexican state, another or more foreign states have jurisdiction over the infringement referred to this Article, the competent authorities of those states, at the request of one of them, will make consults to coordinate the actions and measures to pursue and punish.

Chapter Fifth: Administrative Penalties

Article 27. The administrative penalties that should imposed for the commission of the infringements referred to in Articles 8 and 9 of this Law shall consist of:

II. For corporations:

- a) A fine equivalent to the amount of ten thousand to two million times the general daily minimum wage in effect at the Federal District.

In the case of permits, concessions, authorizations and procedures related to federal public procurement or international business transactions, the maximum fine under the preceding paragraph may be increased until by fifty per cent, when objective factors to determine by the competent authority that the benefit to the offender was superior to the maximum fine.

In the case of federal public procurement made in terms of legal regulations in matter of public procurement, if the maximum fine under the first paragraph of this subsection is less than thirty per cent of the contract amount, shall be imposed a fine between thirty and until thirty-five per cent of the contract amount if the latter was awarded to the offender, and

- b) The disqualification to participate in federal public procurement for a period no lesser than 3 months nor greater than 10 years;

The fines determined in the terms of the Law hereby will have the character of fiscal credits and will be fixed in a cash amount, being subject to the administrative procedure of execution established in the applicable legislation.

In case of the irregular conduct foreseen in section II of Article 8 of the Law hereby, only the disqualification penalty will be applicable.

The term of the disqualification penalty will be computed from the day after the one in which the competent Authority notifies such penalty, through the respective publication in the Official Gazette of the Federation, unless the disqualification derives from the participation of the offender in federal public procurement whose acts should be notified in CompraNet in the terms of the applicable stipulations, in which case the term will be counted from the date of notification in that system.

When in the terms foreseen by the Law hereby, two or more disqualifications in different federal public procurement have been imposed on the same person, such disqualifications will be applied successively, in such way that once the term of the first expires, the application of the second disqualification will start and so forth. The same rule will apply for international commercial transactions.

Under no circumstances the suspension of the disqualification can be decreed, even when the offender opts for litigious administrative trial against the act of authority that orders or executes it.

Article 28. For the imposition of the administrative penalties foreseen in the Law hereby the elements listed below will be taken in consideration:

I. The severity of the offense incurred;

II. The economic circumstances of the offender;

For the effects of the provisions in this section, it can be considered the information of the contracts that the offender has signed and which are logged in CompraNet, or else, if this information is not available, it can be considered the amount of the contract, permit, concession or commercial transaction originating the applicable penalizing administrative procedure;

III. The offender's background, including his behaviour in federal public procurement or, if applicable in international commercial transactions;

IV. The offender's degree of participation;

V. The means of execution;

VI. Recidivism in the commission of offenses under this Law, and

VII. The amount of the benefit, profit or damage derived from the irregular conduct, when these were caused.

For the effects of the Law hereby, the offender will be considered a repeat offender when having been declared responsible for committing any of the irregular conducts referred to in the Law hereby, he incurs again in one or several of them, within a period of 10 years counted from the time the notification of the first penalty enters in effect.

Article 29. The powers of the competent authorities to impose the administrative penalties foreseen in the Law hereby will prescribe in a term of 10 years, counted from the day following that in which the irregular conducts were committed, or from the moment they ceased, if they were continuous.

For the effects of the Article hereby the prescription is interrupted with the notification of the start of the penalizing administrative procedure or, with the impugnation of the respective resolution by the offender.

Article 30. The departments and entities as well as the General Attorney Office cannot grant to the persons who have been penalized in terms of the Law hereby, during the period in which these are disabled, the subsidies, donations and other benefits provided in the Federal Law on Budget and Fiscal Responsibility, the Federal Law on the Management and Disposal of Public Sector Assets and other applicable ordinances.

NICARAGUA

Criminal Code

Article 113. When the criminal act is committed within the scope of or to the benefit of a corporate entity, the judge or court, after hearing the parties or their legal officers, may impose, when grounds exist and when deemed necessary in the specific case, one or several of the following accessory penalties:

- (a) An intervention of the company to safeguard workers' or creditors' rights for as long as necessary, up to a maximum of five years;
- (b) Closure of the company, its premises or establishments, on a temporary or permanent basis. Temporary closure may not be extended for more than five years;
- (c) Dissolution of the company, association, or foundation;
- (d) Suspension of the activities of the corporation, company, foundation, or association for a period not exceeding five years;
- (e) A ban on the future realization of activities, commercial operations, or business of the same kind as those during which the crime was committed, abetted, or concealed. This ban may be either temporary or permanent. If temporary, it may not extend for a period longer than five years.

The temporary closure provided for in section (b) and the suspension provided for in section (d) of the preceding paragraph may also be ordered by the judge during the legal proceedings. The imposition and enforcement of the accessory penalties provided for in this article are intended to prevent the continuation of the criminal activity and the effects thereof.

PANAMA

Penal Code

Article 51. When a legal entity is used or created to commit a crime, or when it benefits from it, any of the following sanctions will be applied:

1. Cancellation or suspension of the license or registration for a term not exceeding five years.
2. Fine of not less than five thousand balboas (B/.5, 000.00) and not more than twice the damages or profits.
3. Total or partial loss of tax benefits.
4. Disqualification from contracting with the State, directly or indirectly, for a term not exceeding five years, which will be imposed along with any of the above.
5. Dissolution of the company.

PERU

Criminal Code

Article 105. Should the punishable act be committed in the performance of the activities of any legal person, or using their organization to aid or abet its commission, the judge shall apply any or all of the following measures:

1. Temporary or permanent closure of its premises or facilities. A temporary closure shall not exceed five years.
2. Dissolution or liquidation of the company, association, foundation, cooperative, or committee.
3. Suspension of the activities of the company, association, foundation, cooperative, or committee for a period of not more than two years.
4. A ban on the company, foundation, association, cooperative, or committee from engaging in the future in activities of the kind in which the offense was committed, aided, or abetted. The ban may be temporary or permanent. A temporary ban shall not exceed five years.

When any of these measures is applied, the judge shall order the appropriate authority to arrange the intervention of the legal person in order to safeguard the rights of the legal person's employees and

creditors for up to two years. A change of trade name, legal status, or corporate reorganization shall not be an impediment to the application of these measures.

UNITED STATES OF AMERICA

Foreign Corrupt Practices Act, 1977

§ 78dd-1 [Section 30A of the Securities & Exchange Act of 1934].

Prohibited foreign trade practices by issuers

(a) Prohibition. It shall be unlawful for any issuer which has a class of securities registered pursuant to section 78l of this title or which is required to file reports under section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to--

(1) any foreign official for purposes of--

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of--

(A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of--

(A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

(g) Alternative Jurisdiction

(1) It shall also be unlawful for any issuer organized under the laws of the United States, or a State, territory, possession, or commonwealth of the United States or a political subdivision thereof and which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any United States person that is an officer, director, employee, or agent of such issuer or a stockholder thereof acting on behalf of such issuer, to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of this subsection (a) of this section for the purposes set forth therein, irrespective of whether such issuer or such officer, director, employee, agent, or stockholder makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, the term "United States person" means a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. § 1101)) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

§ 78dd-2. Prohibited foreign trade practices by domestic concerns

(a) Prohibition. It shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd-1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to--

(1) any foreign official for purposes of--

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of--

(A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of--

(A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

(g) Penalties

(1) (A) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this all be fined not more than \$2,000,000.

(B) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(h) Definitions

For purposes of this section:

(1) The term "domestic concern" means--

(A) any individual who is a citizen, national, or resident of the United States; and

(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(i) Alternative Jurisdiction

(1) It shall also be unlawful for any United States person to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of subsection (a), for the purposes set forth therein, irrespective of whether such United States person makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, a "United States person" means a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. § 1101)) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

§ 78dd-3. Prohibited foreign trade practices by persons other than issuers or domestic concerns

(a) Prohibition

It shall be unlawful for any person other than an issuer that is subject to section 30A of the Securities

Exchange Act of 1934 or a domestic concern, as defined in section 104 of this Act), or for any officer, director, employee, or agent of such person or any stockholder thereof acting on behalf of such person, while in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to--

(1) any foreign official for purposes of--

(A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such person in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of--

(A) (i) influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of--

(A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such person in obtaining or retaining business for or with, or directing business to, any person.

(e) Penalties

(1) (A) Any juridical person that violates subsection (a) of this section shall be fined not more than \$2,000,000.

(B) Any juridical person that violates subsection (a) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(2) (A) Any natural person who wilfully violates subsection (a) of this section shall be fined not more than \$100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person who violates subsection (a) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a person, such fine may not be paid, directly or indirectly, by such person.

(f) Definitions

For purposes of this section:

(1) The term “person,” when referring to an offender, means any natural person other than a. national of the United States (as defined in 8 U.S.C. § 1101) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the law of a foreign nation or a political subdivision thereof