

**TEXT OF THE DRAFT MODEL LAW TO FACILITATE AND ENCOURAGE THE
REPORTING OF ACTS OF CORRUPTION AND TO PROTECT WHISTLEBLOWERS
AND WITNESSES**

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**DRAFT MODEL LAW TO FACILITATE AND ENCOURAGE THE REPORTING OF
ACTS OF CORRUPTION AND TO PROTECT WHISTLEBLOWERS AND WITNESSES****CHAPTER I
GENERAL CONSIDERATIONS****Article 1. Purpose of the law**

The purpose of this law is to establish norms, procedures and mechanisms to facilitate and encourage the reporting of acts of corruption that are liable for administrative or criminal investigation and punishment and to protect public officials and any person who, in good faith, report or witness these acts.

Article 2. Definitions

Public official. In keeping with the provisions of the Inter-American Convention against Corruption, “public official,” “government official,” or “public servant” means any official or employee of the state or of its agencies,¹ including those who have been selected, appointed, or elected to perform activities or functions in the name of the state or in the service of the state, at any level of its hierarchy, and irrespective of the hiring method used.

Acts of corruption. Acts of corruption shall be taken as meaning the illicit acts described in Articles VI, VIII, IX, and XI of the Inter-American Convention against Corruption, together with those set out in the Criminal Code and in other special provisions of criminal law.

In addition, illicit acts or misdemeanors of an administrative nature covered by the applicable special legislation, which are also subject to the terms of this provision, must also be taken into consideration.²

¹ For the purposes of this law, “agencies of the public administration” shall include all entities, organs, projects, programs, and companies of the state that carry out activities under administrative powers and are consequently considered subject to the common provisions of public law, with the exception of for those placed under another regime by the express mandate of law.

² In general, these misdemeanors may be found in special laws on the administrative service and administrative career, Codes of Ethics, Disciplinary Codes, etc., according to the legal system of each country.

Competent authority. Competent authority shall be taken as meaning the institution responsible for receiving, assessing, and granting protective measures. It may be judicial or administrative, according to the nature of the act of corruption.

Good-faith whistleblower. Any person who informs the competent authority of an act which that person considers could be an act of corruption that is liable for administrative and/or criminal investigation.

Good-faith witness. Any person who for whatever reason is in possession of relevant information about acts of corruption of an administrative and/or criminal nature and is willing to collaborate in its prosecution.

Bad-faith whistleblowing or testimony. The act of providing the competent authority with information on an act of corruption, knowing that said acts have not been committed, or with falsified evidence or circumstantial evidence of their commission, in order for an administrative and/or criminal investigation process to be opened.

Protected person. A whistleblower or witness of an act of corruption who has been granted protective measures in order to guarantee the exercise of his/her personal and labor rights and the administrative or judicial proceeding of the acts of corruption.

Protective measures. A set of measures ordered by the competent authority intended to protect the exercise of the personal and labor rights of whistleblowers and witnesses of acts of corruption, and the administrative or judicial proceeding of the acts of corruption. Their application is to depend on the circumstances and conditions of vulnerability as assessed by the competent authority and, if appropriate, is to be extended to their spouses or partners, children, forebears, and siblings.

Article 3. Competence

When the complaint relates to acts of an administrative nature, the competent authority for receiving protection requests, assessing their contents, and/or granting the necessary measures shall be the office of the Comptroller General.³

³ Or other name or agency, depending on the administrative regime of the country in question. In general, it is recommended that this be an autonomous agency of the executive branch and that it also be responsible for bringing administrative proceedings against public servants.

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When the complaint relates to acts of a criminal nature, the competent authority for receiving protection requests, assessing their contents, and/or granting the necessary measures shall be the office of the Public Prosecutor.

To enforce protective measures and depending on their nature and scope, the assistance and cooperation of any other public agency may be sought.

Article 4. Exceptions to the enforcement of the law

No protective measures shall be granted to:

1. Those reporting or providing information in bad faith as set out in Article 14 of this law.
2. Those reporting based on information obtained through violations of basic rights.
3. People who have been expelled from the Program to Protect Whistleblowers and Witnesses of Acts of Corruption.

Article 5. Dissemination commitment

All public agencies shall establish the procedures necessary to disseminate the scope of this law among their workers and the general public, by publishing, at the very least, the text of this law in maximum-visibility locations.

Irrespective of the foregoing, other kinds of mechanisms to ensure awareness of this law may be implemented.

Article 6. Transparency, accountability and confidentiality

All information presented by a whistleblower and/or witness, his or her identity, and all related activities may not be made public under any request for access to information, as the documents are confidential in nature.

No information may be given nor any document submitted, except by order of the competent authority, or in an extraordinary case, by request from a court. Nevertheless, the program may be audited regarding operating procedures but in no case may the auditors know the names or locations of witnesses who have changed their identities or have been relocated.

The auditors must sign a confidentiality agreement, so that at no time may an auditor disseminate by any means information relating to programs to protect whistleblowers and witnesses.

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The competent authority shall submit an annual report to Congress on the condition and operation of this program, without being able to know or disclose the names or locations of witnesses who have changed identities or have been relocated.

CHAPTER II

FACILITATION AND INCENTIVES FOR REPORTING ACTS OF CORRUPTION

Article 7. Reporting acts of corruption

The reporting of acts of corruption is the free and voluntary action whereby the competent authorities are informed of an act of corruption with a view to its subsequent assessment, investigation, and punishment.⁴ It may or may not be accompanied by an express request for protective measures.

The mere lodging of a report triggers basic guarantees and protective measures as provided for in Article 17 of this law.

Article 8. Reporting obligation

Any person having knowledge of an act of corruption has the obligation to report to the competent authorities of the facts, for their investigation and punishment, and may not for that reason face impairments to that person's integrity and property, as well as preserving his/her working conditions.

In the case of public officials, this obligation and the procedures and protective measures applicable to reporting will be brought to their attention at the time of their initial hiring by the public agency.

The authorities have the duty of assisting public employees and private citizens in complying with the obligation of reporting acts of corruption.

Article 9. Administrative measures for facilitating the reporting of an act of corruption

⁴ Complaint procedures and their admissibility requirements shall reflect the procedural and administrative norms of each country.

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The competent authority responsible for receiving reports of acts of corruption shall implement organizational and operational changes⁵ to ensure timely attention is given to these reports and that their confidentiality is ensured, when necessary.

These shall entail, at a minimum, measures such as:

1. Appointment of specialized officers for dealing with reports of acts of corruption.
2. Document processing procedures different from standard procedures.
3. Provision of a request form in accordance with the model attached to this law.
4. Assignment of a specific telephone hotline for receiving reports of acts of corruption.
5. Creation of a specific e-mail account for dealing with reports of corruption.
6. Presentation of reports through intermediaries, without revealing the whistleblower's identity.

These measures shall also apply to requests for protective measures for whistleblowers and witnesses of acts of corruption.

Article 10. Anonymous reporting

If for security reasons a whistleblower and/or witness refuses to give his/her identity, the authority shall assess the information received and, in accordance with its competence, rule on the commencement of the relevant investigation.

Article 11. Confidentiality of the whistleblower's identity

Written records shall be kept of all corruption reports, regardless of how they are presented, to which end they shall be assigned special numerical codes to identify the person making the complaint; in no circumstance may any direct reference be made to the complainant's identity in any subsequent proceeding before administrative and/or judicial venues.

In addition, records shall be kept containing the names and dates of all persons having seen the complaint file, who shall be prevented from revealing that information in any way that would reveal the whistleblower's identity or that of any person related to him/her.

Failure to abide by this provision shall give rise to the applicable administrative, civil, and criminal liabilities as set out in Chapter VII of this law.

⁵ To the extent that is possible, these changes must not alter the contents of the law and must abide by the constraints imposed by the article.

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Article 12. Reporting workplace hostility or reprisals

The agencies responsible for receiving reports shall also be responsible for receiving reports of acts of hostility – for example, arbitrary dismissals, wage reductions, sudden workplace relocations, unjustified changes in the nature of the job, etc. – that constitute an unjustified modification of workplace and unjustified supervision.

Upon receipt of such reports, coordination will take place with the administrative agency responsible for the oversight of labor rights to set down a summary record of the allegations.

If there is shown to be a connection between the testimony and the act of hostility and it is established that these are intended to intimidate or punish whistleblowers and/or witnesses, the matter shall be placed before the criminal and/or administrative authority for it to adopt the corresponding precautionary measures and to punish those responsible. It shall be considered an aggravating circumstance if the hostile act is shown to have been carried out by the superior of the whistleblower and/or witness.

Article 13. Complaints against superiors

In no instance may the formulation of a complaint against a superior be interpreted as a failure to abide by contractual obligations or a breach of loyalty toward the authority or institution that could lead to punitive measures.

Such actions shall be considered harassment subject to liability as set out in Chapter VII of this law.

Article 14. Reports made in bad faith

Whistleblowers and/or witnesses who lodge complaints or give testimony against third parties, knowing that the acts were not committed or fabricating evidence or circumstantial evidence of their commission that could give rise to an administrative and/or criminal investigation, shall be fined by up to ... times the minimum-wage reference amount, regardless of the applicable civil and criminal sanctions.⁶

Article 15. Benefits for whistleblowers and/or witnesses of acts of corruption

The competent authorities may extend economic benefits to whistleblowers and/or witnesses of acts of corruption when the information provided allows for the imposition of penalties involving

⁶ The criminalization of the offense may vary according to the criminal law of each country.

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monetary redress, or when the information provided is truthful and useful and contributes to the identification and location of resources, rights, or goods related to or potentially associated with operations related to acts of corruption.

The amount of the award shall be up to the equivalent of ... % of the value of what is recovered or reimbursed, according to the assessment performed by experts and the decision of the competent authorities assessing the importance of the information provided. If necessary, express publications of the content of this article shall be made in the mass media.

This benefit shall not apply if during the investigations it is established that the whistleblower and/or witness was in any way involved in an act of corruption through which he benefited directly or if such a circumstance was not initially reported.

When the information referred to in this article is provided by a public servant, his/her collaboration in identifying or establishing acts of corruption shall be given a recognition of a nonfinancial nature.⁷

CHAPTER III PROTECTION FOR WHISTLEBLOWERS OF ACTS OF CORRUPTION

Article 16. Protection of whistleblowers

Access to protection for corruption whistleblowers is a right that guarantees the exercise and full enjoyment of the integrity of his/her person and property and the conservation of his/her working conditions, which could possibly be threatened as a result of a report of an act of corruption.

The authorities are obliged to protect the rights of those public employees and private citizens who report acts of corruption and, if necessary, to grant the additional protective measures indicated in this law.

This protection places no restriction on the possibility of whistleblowers participating as witnesses in the investigation of the act of corruption.

Article 17. Basic protection measures for whistleblowers of acts of corruption

⁷ Paragraph to be considered in light of the legal structures of each country.

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All whistleblowers of acts of corruption, by simply being so, shall enjoy the following basic measures of protection, requiring no grounded ruling from the competent authority:

1. Legal assistance for matters related to their report.
2. The confidentiality of their identities pursuant to Article 11.

If the whistleblower is a public official, his/her working conditions shall be protected and he/she may not be terminated, fired, or removed from his/her position as a consequence of the complaint. This protection shall be permanent and may be maintained, at the discretion of the granting authority, even after the conclusion of the investigation and punishment phases that ensue. In no instance shall this protection exempt a public official from administrative responsibilities arising from facts other than those of the complaint.

If the whistleblower is a citizen with no public duties and suffers workplace hostility, he/she shall receive legal assistance in filing the remedies necessary to assert his/her rights in accordance with the labor standards of the private sector.

Article 18. Additional protection measures for whistleblowers of acts of corruption

In addition and at the discretion of the competent authorities, additional protective measures may be granted to whistleblowers of acts of corruption – on an exceptional basis – provided that there is a real or potential danger to or vulnerability of the integrity of their persons and property or of an unjustified change in their workplace conditions. These are:

Protective measures in the workplace

1. Transfer of administrative unit within the agency.
2. Change of workplace, if applicable.
3. Suspension with pay and without prejudice.
4. Others established by the authority.

Personal protective measures

1. Police protection.
2. Change of whistleblower/witness's residence or concealment of whereabouts. In exceptional cases, this measure shall be applicable extraterritorially.
3. Others established by the authority.

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The granting of additional protective measures requires that the competent authority issue a grounded resolution.

Article 19. Protective measures for witnesses

In addition, and if necessary, on an exceptional basis and with cause, the competent authority may grant to whistleblowers of acts of corruption the protective measures extended to witnesses.

Such measures shall be granted provided that the whistleblower agrees to abide by all the obligations and demands imposed on witnesses of acts of corruption and signs the corresponding Letter of Agreement, as set out under Article 31 of this Law.

**CHAPTER IV
PROTECTION FOR WITNESSES OF ACTS OF CORRUPTION****Article 20. Witness protection**

Access to protection for witnesses of acts of corruption is a right that guarantees the exercise and full enjoyment of the integrity of their persons and property and the conservation of their working conditions, which could possibly be threatened as a result of their involvement in the proceedings of a corruption investigation.

For this purpose, the competent authorities shall provide witnesses of acts of corruption with maximum guarantees to ensure the protection of their rights and the proper course of investigation proceedings in the case.

Article 21. Basic protection measures for witnesses of acts of corruption

All witnesses of corruption, by simply being so, shall enjoy the following basic measures of protection, requiring no grounded ruling from the competent authority:

1. Legal assistance for their participation in the criminal or administrative proceedings.
2. The confidentiality of their identities pursuant to Article 11.

If the witness is a public official, his/her working conditions shall be protected and he/she may not be terminated, fired, or removed from his/her position as a consequence of his/her involvement in the investigation proceedings. This protection shall be permanent and may be maintained, at the discretion of the granting authority, even after the conclusion of the investigation and punishment

phases that ensue. In no instance shall this protection exempt a public official from administrative responsibilities arising from facts other than those of the act of corruption.

If the witness is a citizen with no public duties and suffers workplace hostility, he/she shall receive legal assistance in filing the remedies necessary to assert his/her rights in accordance with the labor standards of the private sector.

Article 22. Additional protection measures for witnesses of corruption

In addition and at the discretion of the competent authorities, additional protective measures may be granted to witnesses of corruption – on an exceptional basis – provided that there is a real or potential danger to or vulnerability of the integrity of their persons and property or of an unjustified change in their workplace conditions.

These are the following:

Protective measures in the workplace

1. Transfer of administrative unit within the agency.
2. Suspension with pay and without prejudice.
3. Change of workplace, if applicable.
4. Others established by the authority.

Personal protective measures

1. The confidentiality of his/her identity in the proceedings in which the witness participates, preventing the documents from making express reference to his/her name, address, workplace, profession, or any other details that would serve to identify him/her.
2. Participation in proceedings using methods that prevent the visual or aural identification of the witness (voice distorters, face coverings, etc.) The use of this measure shall strive to avoid undermining the guarantees of due process during the corruption investigation.
3. Use of mechanical or technological procedures to avoid the physical participation of the witness in the proceedings (videoconferencing, teleconferencing, etc.)
4. Change of identity through the issuance of new papers.
5. Police protection that can include the permanent assignment of police personnel at their homes and to accompany them throughout the day.
6. Change of address or concealment of the witness's whereabouts. In exceptional cases, this measure shall be applicable extraterritorially.
7. Monetary assistance for subsistence if left destitute as a result of the complaint.

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8. Indication of an alternate address for notifications issued as a part of the investigation proceedings.
9. In the case of witnesses that are in prison, special protection measures, such as separation from the rest of the prison population or confinement in special prisons or areas.
10. Others established by the authority.

The granting of additional protective measures requires that the competent authority issue a grounded resolution.

CHAPTER V REQUESTING AND GRANTING PROTECTIVE MEASURES

Article 23. Applications for protective measures made by whistleblowers and witnesses of acts of corruption

An application for protective measures is an action whereby a whistleblower and/or witness of acts of corruption requests the granting of protective measures, deeming the integrity of his/her person or property to be threatened or undermined or there to be an undue alteration in his/her working conditions.

Article 24. Filing period for lodging protection requests

Protection requests may be presented along with the report of an act of corruption or at a later date.

No formalities are applicable to their presentation, and they may be made orally, by e-mail, over the telephone, and/or in writing. Irrespective of the foregoing, specific forms may be designed in consideration of the provisions of this law.⁸

If not presented by the whistleblower or witness of acts of corruption, upon observing the conditions of danger the competent authority may grant the additional protective measures set out in Articles 18 and 22 of this law, after inquiring of the whistleblower and/or witness of acts of corruption regarding the circumstances on which they are made, and upon acceptance on their part to the commitments that this entails.

Article 25. Admissibility of applications for protective measures

Protection requests shall be admitted when they meet requirements such as the following:

⁸ Take the attached model into consideration.

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1. They must be based on the presentation of a complaint alleging actions or failures to act that indicate acts of corruption of a criminal and/or administrative nature.
2. They must identify the perpetrators of the alleged facts and, if applicable, their accomplices. If this information is unknown, an explicit note of that fact must be made.
3. The alleged facts must not have been dealt with in formally concluded judicial or administrative proceedings (*res judicata*).⁹
4. Statutory limitations must not be applicable to the alleged facts.
5. They must contain a signed commitment by the whistleblower and/or witness to cooperate in all formalities at the request of the competent authority.
6. One or more protective measures must be expressly requested.
7. The beneficiaries must be identified.

If necessary, should any requirement be omitted from the request for protective measures, the applicant shall be given a deadline of ... days in which to provide the information needed.

Article 26. Assessment of protection requests

After receiving a protection request, the competent authorities shall assess the information received in order to determine its relevance and the level of danger or vulnerability to which the applicant is subject and, if appropriate, order the granting of the additional protective measures set out in Articles 18 and 22 of this law.

For this purpose, the competent authorities shall order all the relevant formalities to obtain certainty regarding the alleged facts.

If not, the request for protective measures shall be declared either partially or wholly inadmissible and, if necessary, the applicant shall be called on to submit additional information.

Article 27. Assessing the relevance of the information

The information provided by the whistleblower and/or witness for the purpose of securing protective measures shall be deemed relevant if it allows the administrative and/or judicial authority to meet at least one of the following:

⁹ A declaration of *res judicata* (by a judicial or administrative venue) means that the matter cannot be reviewed because the appeal instances have been exhausted and the authority has already ruled on it.

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1. To prevent the continuation, existence, or completion of the act of corruption, or to substantially reduce the magnitude or consequences of its execution.
2. To prevent or neutralize future acts of corruption.
3. To identify the circumstances in which the act of corruption was planned and carried out, or the circumstances in which it is being planned or carried out.
4. To identify the perpetrators and accessories of an act of corruption that has been or is about to be committed, or the members of a criminal organization and its operations, in order to dismantle or weaken it or arrest one or more of its members.
5. To ascertain the whereabouts or destination of the instruments, goods, effects, and proceeds of the act of corruption, and to reveal the sources of funding of criminal organizations.
6. To hand over to the authorities criminal instruments, effects, proceeds, or goods produced by acts of corruption.
7. To contribute, in the judgment of the competent official, evidence for further pursuit of the investigation.

For the purposes of this article, a substantial reduction in the magnitude or consequences of the execution of an act of corruption shall be when there is a reduction in the volume of the damage that would have been caused by planned or ongoing actions through the timely notification of the authorities, or when such notification prevents the commission of those actions.

Article 28. Evaluation of potential risk to whistleblowers and/or witnesses

The risk assessment shall depend on the existence of actual or potential conditions of danger for the whistleblower and/or witness of acts of corruption.

Actual conditions of risk are those in which actions have already taken place against a whistleblower's physical integrity, property, and/or job security, and/or those of his/her spouse or companion, children, forebears, or siblings, with the possibility of other similar actions affecting them in the future.¹⁰

¹⁰ Attempts against the life, person, or property of whistleblowers, acts of workplace hostility (unjustified dismissal, sudden transfer of workplace), etc.

Potential conditions of risk are when there exist facts or circumstances that allow the inference of possible attacks on a whistleblower's physical integrity, property, and/or job security, and/or those of his/her spouse or companion, children, forebears, or siblings.¹¹

Article 29. Preparation and contents of the order granting or denying additional protective measures

Upon conclusion of the corresponding preliminary formalities, and if additional protective measures are to be granted or denied to the whistleblowers and/or witnesses, an order shall be prepared, indicating:

1. The reported facts and the preliminary formalities carried out.
2. The protective measures granted or the reason for their denial.
3. The mandate to the agencies whose involvement or assistance is deemed necessary to implement the protective measures.
4. An application for mutual assistance from another state, if required.
5. The obligations to which the protected person is to be subject.
6. The conditions that involve the removal of protective measures.

Article 30. Obligations of persons under protection

The obligations to which the beneficiary of protection is subject seek to ensure the good course of the criminal and/or administrative proceedings related to the act of corruption, and to maintain the conditions necessary for the continuance of the protective measures.

Consequently, they may include:

1. Cooperating in the necessary formalities at the request of the competent judicial and/or administrative authority.
2. Behaving appropriately in order to maintain the effectiveness of the protective measures, ensuring its integrity and security.
3. The duty of confidentiality by the whistleblower or witness, even when they leave the program, with regard to the conditions and the manner the program operates.
4. Other measures as indicated by the competent administrative authority and/or the Office of the Public Prosecutor.

¹¹ Subordination of the whistleblower to the person accused, complaints naming persons who are members of organized criminal gangs, complaints regarding criminal acts involving drug trafficking, terrorism, or other serious offenses.

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In case of noncompliance of these obligations by a person under protection, the authority, depending on the severity of the case, may reprimand or expel the person from the Program to Protect Whistleblowers and Witnesses of Acts of Corruption, notwithstanding of any civil proceedings undertaken to in order to compensate any damages caused to the State.

Article 31. Letter of agreement on compliance obligations

Once admitted to the Program to Protect Whistleblowers and Witnesses of Acts of Corruption, whistleblowers and witnesses must sign a Letter of Agreement on Compliance Obligations, which is a document that sets out in detail both the obligations and actions by the authority responsible for granting protection, the obligations and actions to be undertaken by whistleblowers and witnesses, as well as the sanctions that the latter may have imposed for noncompliance, which may include expulsion from said Program.

This Letter should contain, at minimum:

1. The statement by the whistleblower or witness, and in the case of persons connected by kinship, that admission to the aforementioned Program is voluntary, knowingly and made without coercion and that the granting of protection measures is not to be understood as payment, compensation or reward for testifying.
2. The scope and nature of the protection that is to be granted by the authority, as set out in the order referred to in Article 29 of this Law.
3. The obligations of the whistleblower and witness subject to protection and the sanctions to be applied in cases of non compliance, as set out in the order referred to in Article 29 of this Law.

Article 32. Deadline for issuing resolutions on the granting of protective measures

The deadline within which the authority is to issue a resolution granting or denying the protective measures sought may not exceed ... calendar days.

Article 33. Granting of precautionary protective measures

Regardless of the deadline for the resolution and after assessing the conditions of risk, the authority may, immediately after the request for protection is filed, grant protective measures on a precautionary basis, subject to subsequent verification of the alleged facts.

Article 34. Combined measures

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The granting of a protective measure does not preclude the possibility of others being granted; they may be combined depending on the circumstances assessed by the granting authority.

Article 35. Extraterritorial enforcement

Based on the reasons given by the competent authority to grant protective measures to whistleblowers and witnesses of acts of corruption, those measures may be applied in foreign territories as provided for in Chapter VIII of this law.

Article 36. Adjustments to protective measures

The agency granting the protective measures shall provide reasons on maintaining, modifying, or canceling any or all the protective measures extended to whistleblowers and/or witnesses of acts of corruption at any stage in the administrative or criminal proceedings, whenever the beneficiary so requests or when developments so warrant arise.

Article 37. Extension of additional measures

Once the criminal and/or administrative proceedings have concluded and the relevant penalties have been imposed, the agency granting protective measures to whistleblowers and witnesses may decide to extend the life of the protective measures, provided that it believes that the conditions of risk still exist.

Article 38. Transfer of jurisdiction

If the complaint or request for protective measures was lodged before the competent administrative authority and it should be heard by the competent judicial authority, or if the investigations conclude that there are indications that some act considered a criminal offense may have been committed, or vice-versa, notice shall be given to the corresponding authority in order for the relevant proceedings to begin.

This procedure shall be carried out in accordance with maximum guarantees to prevent any dissemination of confidential information that could endanger the person of the whistleblower and/or witness of acts of corruption. In such cases, the penalties described in Chapter VII of this law shall apply.

**CHAPTER VI
CHALLENGES****Article 39. Challenges**

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Decisions by competent administrative and/or judicial authorities regarding the granting, denial, modification, or extension of protection requests may be challenged by any person or body with a legitimate interest.

Article 40. Remedies for challenges at administrative venues¹²

The remedies for challenges at administrative venues are the following:

1. Reconsideration remedy.
2. Appeal remedy.
3. Review remedy.

The period for filing challenges shall be ... working days, and they shall be resolved within no more than ... working days.

Reconsideration remedies shall be filed with the agency that issued the first decision being challenged and shall be based on new evidence.

Appeal remedies shall be filed when the challenge is based on a different interpretation of the documentation submitted or when matters of law alone are involved; they shall be addressed to the same authority that issued the administrative decision being challenged, which shall refer it to its appeal body.

On an exceptional basis, review remedies may be admitted before a third venue with national jurisdiction, if the two previous instances were resolved by authorities without national jurisdiction, and they shall be addressed to the same authority that issued the decision being challenged for it to refer the proceedings to its hierarchical superior. They may only be based on considerations of law alone.

Following the deadlines for lodging administrative remedies or when the final possible instance has issued judgment, the resolution granting protective measures shall be considered *res judicata* and the administrative decision shall stand.

Administrative remedies may be brought on one occasion only in each administrative proceeding and at no time simultaneously.

¹² The content of this article may be amended if there is a specific provision governing this issue.

The decision that exhausts all administrative venues may be challenged before the judiciary by means of the procedure for administrative disputes provided for in the applicable law.

Article 41. Remedies at judicial venues

Rulings by the Office of the Public Prosecutor regarding the granting, denial, modification, or extension of protective measures may be challenged by means of a complaint appeal directed to the immediately superior judicial body within a period of no more than ... working days, specifying the act or omission on which it is grounded.

It may be grounded on new evidence or on considerations of law alone, and shall be resolved within a maximum of ... working days.

CHAPTER VII
LIABILITY FOR NONPERFORMANCE OF DUTIES

Article 42. Liability for nonperformance of duties

Noncompliance or failure to observe duties related to the granting of protective measures to whistleblowers and witnesses of acts of corruption shall give rise to administrative, civil, and criminal liability, as applicable. Sanctions shall be imposed through administrative or judicial proceedings as provided in the applicable special regulations.

Elements of risk or vulnerability caused by imprudent actions on the part of the beneficiaries of protective measures cannot be blamed on public officials and shall trigger no liability either for them or the state.

Article 43. Duties of public officials¹³

The following shall be the duties of public officials in connection with the protection of whistleblowers and witnesses of acts of corruption:

1. To receive complaints, protection requests, and challenge remedies conscientiously and on a timely basis.
2. To convey documents received to the authority responsible for giving a decision or ruling thereon within the legal deadline.

¹³ The penalties and the criteria whereby they are to be imposed may be amended in light of each country's administrative disciplinary provisions.

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3. To resolve matters placed before them, providing reasons.
4. To communicate, within the deadline proscribed by law, the grounds for recusal involved in a case of clear incompatibility.
5. To fulfill mandates issued by superiors diligently and on a timely basis.
6. To discharge their functions in strict compliance with the law.
7. To refrain from disseminating in any way or allowing access to confidential information that might endanger the person of the whistleblower and/or witness.

Nonfulfillment of these duties, or negligence in the prescribed actions, shall trigger liability leading to administrative sanctions following the pursuit of disciplinary proceedings by the competent authority.

Article 44. Administrative sanctions

The applicable administrative sanctions, classified as minor and major, are the following:

Minor sanctions:

1. Admonishment.
2. Suspension.
3. Fine of up to ten times the applicable reference minimum wage.

Major sanctions:

1. Rescission of contract.
2. Dismissal or firing.
3. Disqualification from holding public office for up to 5 years.

Article 45. Criteria for imposing sanctions

Sanctions shall be imposed in consideration of the following criteria:

1. The harm caused to the whistleblower and/or witness.
2. Extent to which the proceedings are affected.
3. Nature of the duties performed by the offender, together with his/her post and position in the hierarchy.
4. Recidivism.
5. Intentionality of the action.

Article 46. Civil liability for noncompliance with protective measures granted to whistleblowers and witnesses

Irrespective of administrative liability, the commission of acts that result in the noncompliance with the obligations by officials responsible for protecting whistleblowers and witnesses of acts of corruption shall give rise to civil liability, consisting of the payment of damages as determined by the competent judicial authority.

Article 47. Criminal liability

Criminal liability shall entail the imposition of a criminal penalty for the crime of failing to carry out duties,¹⁴ as determined by the authority with judicial competence over criminal matters.

Article 48. Responsibility of beneficiaries

The granting and maintenance of protective measures is dependant on compliance with the obligations described in Article 30 and in the signed Letter of Agreement as set out in Article 31 of the Law. Noncompliance therewith may be punished with expulsion from the Program to Protect Whistleblowers and Witnesses of Acts of Corruption following an investigation of the facts entailing violations of those obligations, of which record shall be made, by the competent authority, in the grounded resolution adopting such a decision, against which the corresponding challenges shall be admissible.

**CHAPTER VIII
MECHANISMS FOR INTERNATIONAL COOPERATION**

Article 49. Areas for international cooperation in protecting whistleblowers and witnesses of acts of corruption

Within the framework of the principle of reciprocity established by different provisions and instruments of public international law, such as the Inter-American Convention against Corruption and other treaties to which the State is a part, consideration shall be given to the provision of mutual assistance for meeting the purposes of this law in the following areas:

1. Implementation of protective measures for whistleblowers and witnesses of acts of corruption.
2. Enforcement of judicial procedures.
3. Cooperation for institutional strengthening

¹⁴ The criminal offense set out in this Model Law may be changed in accordance with the legal system of each country.

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Article 50. International cooperation for implementing measures to protect whistleblowers and witnesses of acts of corruption

In accordance with the principle of reciprocity, the authorities responsible for granting and/or implementing protective measures for whistleblowers and witnesses of acts of corruption shall consider rendering assistance to other states in enforcing the following protective measures:

1. Issuance of a new identity.
2. Change of residence or concealment of whereabouts.
3. Change of workplace or temporary relocation, as applicable.
4. Others, as applicable.

Article 51. Termination of protective measures

The authorities responsible for implementing protective measures for corruption whistleblowers and witnesses at the request of another state shall cease to do so when:

1. They are notified of an order of termination of protective measures by the state that granted them.
2. The protected whistleblower and/or witness breaches the public order.
3. Imprudent actions by a protected person endanger the implementation of the protective measures.

Article 52. International cooperation for the enforcement of judicial procedures

In accordance with the principle of reciprocity enshrined in the Inter-American Convention on Mutual Assistance in Criminal Matters and in other treaties to which the State is a party, the authorities responsible for granting and/or implementing protective measures for whistleblowers and witnesses of acts of corruption shall consider providing extensive assistance to other states requiring the enforcement of judicial actions in criminal proceedings involving acts of corruption.

Consequently, and if so requested, they may:

1. Receive testimony and/or statements sought by the requesting country.
2. Serve notification of resolutions.
3. Conduct inspections or seizures.
4. Transfer the protected whistleblower and/or witness to the country that granted the protective measure. Transfers to other states may take place provided that the state that initially granted the protective measures so agrees.

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5. Provide copies of any documents necessary to clear up the alleged facts that gave rise to the granting of protective measures.
6. Any other action, provided that both states are in agreement thereon.

Article 53. Cooperation for institutional strengthening

Pursuant to the Inter-American Convention against Corruption, the agencies empowered to issue protective measures to whistleblowers and witnesses of acts of corruption shall be authorized to render the broadest mutual assistance to other similar agencies of other states through the following mechanisms:

1. Mutual legal assistance.
2. Mutual technical cooperation.
3. Meetings to exchange experiences.
4. Professional internships or positions in other similar entities.

For this, ties of direct bilateral cooperation shall be established but, in addition, states shall participate actively in the existing multilateral cooperation efforts.

Article 54. Requests for assistance

Requests for assistance in the protection of whistleblowers and witnesses of acts of corruption shall be made in accordance with the internal rules and provisions of the State on which the request is served and in accordance with bilateral and multilateral agreements on this issue. Requests for mutual legal assistance shall be made in the official language of the requested State.

For receiving and processing requests for assistance in connection with the protection of whistleblowers and witnesses of acts of corruption, the coordination shall be carried out through the Central Authorities for International Legal Assistance. When the complaint is administrative in nature, requests for mutual assistance between states shall be dealt with directly by the Comptroller General's Office¹⁵ and the competent agency of the other country.

Requests for assistance shall contain the following information:

¹⁵ Or another name or agency, depending on the administrative regime of each country. In general, it is recommended that this be an autonomous agency of the executive branch and that it also be responsible for bringing administrative proceedings against public servants.

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1. Description of the offense or administrative misdemeanor in question, and of the reasons for the granting of protective measures and for the request for assistance from the state on which the request is served.
2. Exact description of the assistance sought and all the information necessary to comply with the request.
3. The threat level for the whistleblower or witness.
4. The conditions and needs of the whistleblower or witness, their professional background, their capacity for adaption, their criminal history, their psychological profile and responsibility for others.
5. Where appropriate, the number of people that will be relocated along with the whistleblower or witness.

If deemed necessary, the requesting State may be asked for additional information and, if appropriate, the request shall be declined, with an explanation of the reason.

Article 55. Confidentiality in requests for cooperation between States

When requests for cooperation in protecting whistleblowers and witnesses of acts of corruption are received from other states, the absolute confidentiality of the information received shall be observed and formalities shall proceed in the same way as with people protected by this law.

This obligation shall be subject to the sanctions described in Chapter VII of this law.

Article 56. Funding for mutual assistance actions

Regardless of the existence of agreements with the authorities of other countries, when cooperation implies the transfer of protected persons to another territory, all the direct costs of mutual assistance actions shall be met by the requesting State, including accommodation, subsistence, medical assistance, and others.

In addition, all indirect costs shall be met by the competent authorities of the requesting country, including such matters as internal transportation, police protection, etc.

Article 57. Transfer of protected whistleblowers and witnesses detained in other states

Transfers of whistleblowers and witnesses to whom protective measures have been granted and who are for any reason being detained in another state shall be governed by the rules for the transfer of persons contained in the Inter-American Convention on Mutual Assistance in Criminal Matters, the treaties to which the country is a party, and other provisions of international law.

CHAPTER IX
**BASES FOR THE CREATION AND OPERATION OF A PROGRAM TO PROTECT
WITNESSES AND WHISTLEBLOWERS OF ACTS OF CORRUPTION**

Article 58. Program to Protect Whistleblowers and Witnesses of Acts of Corruption¹⁶

The implementation of this law requires the creation of a Program to Protect Whistleblowers and Witnesses of Acts of Corruption to serve as an organic and specialized agency to enforce this law and pursue its goals.

Thus, orders shall be given for the modification of the rules governing the necessary organization and functions in accordance with the framework and objectives of this law.

Article 59. Operations of the Program to Protect Whistleblowers and Witnesses of Acts of Corruption

In order to ensure the operations of the Program to Protect Whistleblowers and Witnesses of Acts of Corruption, adequate budgetary resources to ensure that the objectives of this law are met shall be provided.

To comply with the provisions of this law, maximum personal guarantees shall be extended to all officials responsible for the protection of whistleblowers and witnesses of acts corruption.

In addition, demanding selection procedures shall be implemented to guarantee the suitability of personnel, and their training for and continued presence in their positions shall be ensured.

The government shall ensure the budgetary, technological, and other requirements necessary for due compliance with the provisions of this law.

Article 60. Coordination with international agencies

The Program to Protect Whistleblowers and Witnesses of Acts of Corruption shall seek to maintain ties of multilateral cooperation in order to strengthen their performance in discharging their duties.

ADDITIONAL PROVISIONS

¹⁶ Article for reference purposes should similar programs exist, depending on each country.

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ONE. Legislation enacted by the subnational levels of government shall remain in line with the provisions of this law within the scope of their functions and authority.

Thus, by reason of its special nature, this law shall have precedence over other existing provisions.

In Federal States, the states and the federal government may enter into cooperation agreements to establish mechanisms to incorporate the Program to Protect Whistleblowers and Witnesses of Acts of Corruption, to people who may be subject to protection.

TWO. The Comptroller General's Office and the Office of the Public Prosecutor shall regulate the necessary organizational and functional matters within those agencies in order to duly enforce Article 9 of this law, within a maximum of ... days of the date on which it comes into effect.

To be communicated to the President of the Republic for promulgation.

ANNEX

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|--|--|
| PROGRAM TO PROTECT WHISTLEBLOWERS AND WITNESSES OF ACTS OF CORRUPTION Form for Reporting Acts of Corruption and Requesting Protective Measures for Whistleblowers and Witnesses of Acts of Corruption | |
| 1. PERSONAL INFORMATION | |
| NAME: ID DOCUMENT: ADDRESS: TEL: E-MAIL: | |
| 2. INFORMATION ABOUT THE CORRUPTION ALLEGATIONS | |
| THE COMPLAINT HAS BEEN PRESENTED PREVIOUSLY YES () NO () IF "YES," INDICATE THE AGENCY WITH WHICH IT WAS LODGED AND THE STATUS OF THE PROCEEDINGS IF "NO," INDICATE: AGENCY WHERE THE ACT OF CORRUPTION OCCURRED NAMES OF PARTIES INVOLVED INCIDENT TO BE REPORTED DATE ___/___/___ | |

SUPPORTING EVIDENCE

-
-
-
-
-
-
-

3. JUSTIFICATION FOR THE REQUEST FOR PROTECTIVE MEASURES

EXPLAIN THE REASONS FOR THE REQUEST. IF NECESSARY, ATTACH EVIDENCE.

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-

4. REQUEST FOR PROTECTIVE MEASURES.* Please check (X)

A. Protective measures for whistleblowers

Protective measures in the workplace

- Transfer of administrative unit within the agency
- Change of workplace, if applicable
- Suspension with pay that does not generate repercussions

Personal protective measures

- Police protection
- Change of whistleblower’s residence or concealment of whereabouts

B. Protective measures for witnesses

Protective measures in the workplace

- Transfer of administrative unit within the agency
- Suspension with pay and without prejudice for the whistleblower and/or witness
- Change of workplace, if applicable

Personal protective measures

- The confidentiality of his/her identity in the proceedings in which he/she participates, preventing the documents from making express reference to his/her name, address, workplace, profession, or any other details that would serve to identify the witness.
- Participation in proceedings using methods that prevent the visual or aural identification of the witness (voice distorters, face coverings, etc.).
- Use of mechanical or technological procedures to avoid the physical participation of the witness in the proceedings (videoconferencing, teleconferencing, etc.).

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- Change of identity through the issuance of new papers.
- Police protection.
- Change of address or concealment of the witness's whereabouts.
- Monetary assistance for subsistence.
- Indication of an alternate address for notifications issued as a part of the investigation proceedings.
- Separation from the rest of the prison population or confinement in a special prison (Measure applicable when the witness is in prison)

BENEFICIARIES: Indicate names and relationship

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* The granting of protective measures is subject to the subsequent assessment conducted by the competent authority.

5. DECLARATION

I hereby declare that all the facts set out in this application are true and, if applicable, I agree to meet all the obligations indicated by the authorities and in the Letter of Agreement on Compliance Obligations.

Full name ___/___/___

Signature