



Mexico - Global bribery offenses guide

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Por Jorge Benejam

1) What is the legal framework governing bribery in Mexico?

Bribery-related offenses in Mexico are mainly governed by:

- The Federal Criminal Code (**Código Penal Federal**) (ECC);
- The General Law of Administrative Responsibilities (**Ley General de Responsabilidades Administrativas**) (GLAR); and
- The Criminal Codes of each of the Mexican states.

2) What is definition of Bribe under Mexican Law?

As provided under article 222 of the FCC, a bribe is committed when:

- a public official, either directly or indirectly, requests or receives for themselves or for another person, money or any other benefit, or accepts a promise, to perform or fail to perform an act that is inherent to their job, position or commission as public official;
- a person gives, promises or delivers any benefit to any elected public official to perform or fail to perform an act that is inherent to their job, position or commission as public official; or
- a member of congress, when performing their duties during the process of approving the corresponding budget of disbursements (**presupuesto de egresos**), requests any of the following:
 - the allocation of resources in favor of a public entity, demanding or obtaining for himself or herself or for another person, a payment, gift or consideration, in money or in kind, different from their salary as a public official; or
 - the execution of public works or service contracts in favor of certain individuals or companies.

Note: A bribery offense is also committed when any person handles or requests, on behalf of such congressman, the allocation of resources or the execution of public works or service contracts in the same terms described above.

As provided by the GLAR, a bribe is committed when:

- a public official requests, accepts, obtains or pretends to obtain, either directly or indirectly, any benefit not comprised within their salary, consisting in money; securities; assets or real estate; including any sale with a price that is remarkably under market value; donations, services; job offers and other unduly benefits for the public official or their spouse, relatives or third parties with whom the public official has professional, labor or business relations, or for partners or companies in which the public official is a partner; or
- a public official refrains from returning the excess in their payment according to the applicable rules, within 30 calendar days from reception of such payment.

As provided under article 222 bis of the FCC, a bribe is committed in connection with a foreign public official when:

- any person with the aim of obtaining or retaining, either for themselves or for any other person, undue advantages in the development or conduct of international commercial transaction, offers, promises or delivers, directly or indirectly, money or any gift, either in goods or services:
 - to a foreign public official, for their own benefit or the benefit of a third party, so that such official handles or refrains from handling the processing or resolution of matters related to their authorities under their employment, position or commission;
 - to a foreign public official, for their own benefit or the benefit of a third party, so that such official handles the processing or resolution of matters that are not within their functions under their employment, position or commission; or
 - to any person so that they appear before a foreign public official to require or to propose to such official to handle or resolve any matter related to their authorities under their employment, position or commission.

A foreign public official is defined as any person with a job, position or commission within the legislative, executive or judicial power, or within any independent public body at any level of a foreign government, either appointed or elected; any person exercising his or her authorities for any authority, organism, state-owned company or company with state participation, of a foreign government; and any official or agent of an organism or international public organization.

3) What are the principal bribery-related offenses under this legal framework?

- Requesting or receiving a bribe.
- Giving, promising or delivering a bribe.
- Undue allocation of resources when approving a budget of disbursements (*presupuesto de egresos*).
- Not returning, within the applicable timeframe, the excess in their payment as public official, as per the applicable rules.

4) What is the jurisdictional reach of the legal framework?

The jurisdictional reach is limited to Mexico.

5) Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

Public officials can be prosecuted for bribery offenses under paragraphs I and III of Article 222 of the FCC, and under Article 52 of the GLAR.

Private individuals can be prosecuted for bribery offenses under paragraph II of Article 22 of the FCC.

A company and/or its administrators and/or representatives can be held liable under articles 421 to 425 of the National Code of Criminal Procedures (*Código Nacional de Procedimientos Penales*) (NCCP).

6) Can a parent company be liable for its subsidiary's involvement in bribery?

Liability is limited to the company (and its administrators and/or representatives) regarding crimes committed in its name, on its behalf, in its benefit or through any means provided by such company, and when it has been concluded that no due controls were in place by such company to prevent the bribe.

7) Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

Yes, under Mexican Law facilitation payments are considered bribery, no matter how small the amount.

8) Does the legal framework restrict political and charitable contributions?

Yes, political and charitable contributions could be considered bribery if they are given or received with the intention that the corresponding public official performs or fails to perform an act that is inherent to their job, position or commission as provided in article 222 of FCC and 52 of the GLAR.

Also, as provided under article 52 of the GLAR, a public official may not receive any benefit other than their salary.

9) Does the legal framework place restrictions on corporate hospitality?

Yes, a public official may not receive any benefit other than their salary. (GLAR Art 52)

10) Are there any defenses for bribery offenses?

There are no specific statutory defenses for bribery offenses; however, the GLAR provides several) defenses for specific cases within the administrative responsibility process such as **recurso de inconformidad**, **recurso de revocación** (a defense for non-serious administrative offenses), **recurso de rekamación**, **recurso de apelación** (a defense for serious administrative offenses, such as bribery) and **recurso de revision**.

11) What are the key regulatory or enforcement bodies with regard to bribery?

- The bodies comprising the National Anti-Corruption System.
- The General Prosecutor's Office (**Fiscalía General de la República**).
- The Prosecutor's Office of each of the Mexican states.

12) What are the legal consequences of being found guilty of bribery offenses?

Under the ECC:

- When the amount or value of the bribe does not exceed the amount equivalent to 500 times the **Unidad de Medida y Actualización** at the time of committing the bribe, or the bribe is not able to be valued, individuals may face between three months' to two years' imprisonment and a fine.
- When the amount or value of the bribe exceeds the amount equivalent to 500 times the **Unidad de Medida y Actualización** at the time of committing the bribe, individuals may face between 2 to 14 years' imprisonment and a fine.
- Under no circumstances may the money or any other benefits be returned to the individuals found guilty or to the company(ies).
- When companies are involved in bribery offenses, a fine shall be imposed along with the suspension or dissolution of the corresponding company, considering the degree of knowledge or involvement of the corporate organs in the international transaction or the damages caused or the benefits obtain by the company.

Under the GLAR:

- Suspension of employment, position or commission.
- Removal of employment, position or commission.
- Economic sanction.
- Temporary disqualification to employment, positions or commissions within the public service and to participate in public procurement processes.

13) Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

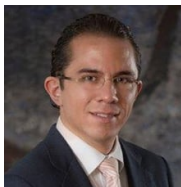
Mexican Criminal Law provides the following settlement mechanisms:

- Conditional Suspension of the Process.
- Abbreviated Process.
- Anticipated termination of the Process.

[Access the full guide](#)

[Return to Overview page](#)

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