

Santistevan & Duclaud

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FEDERAL GOVERNMENT COMPLIANCE IN MEXICO (Anti-Corruption Statute)

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The Federal Anti-Corruption Law on Government Procurement ("*Ley Federal Anticorrupción en Contrataciones Públicas*") [the "Compliance Statute"], was published on June 11, 2012 (Federal Official Gazette).

1. Purpose

To avoid corruption in federal procurement, and penalizing the following Individuals and Entities for breaching the Compliance Statute:

- (i) Mexicans and foreigners, when participating in "federal public procurement"; and
- (ii) Mexicans, when participating in international commercial transactions.

2. Federal Public Procurement

Are all those contractual procedures, preparatory acts, and those acts which derive from entering into, performing, fulfilling contracts, concerning acquisitions, leases, services, public works and related services, implemented by federal public agencies, and pursuant to the federal procurement legislation.

The foregoing includes acts and procedures related to public bids or requests for proposals (RPSs) for federal permits or concessions, or for their extension.

3. International Commercial Transactions

Are those acts (defined below) implemented by foreign state public entities, or that involve the participation of a foreign public servant, in which Mexican individuals or entities will be involved, directly or indirectly.

Those acts are any international commercial transaction, and related acts and procedures, related to entering into, performing, and fulfilling contracts concerning acquisitions, leases, services, public works and related services; including acts and procedures related to granting and extending permits or concessions, and any other related authorization or arrangement.

4. Individuals and Entities Subject to the Compliance Statute.

4.1. Direct Participants:

Mexican or foreign individuals or entities, participating in federal public procurement either as interested parties, bidders, guests, suppliers, contract awardees, independent contractors, permit holders, concessionaries or similar.

4.2. Supporters of Direct Participants:

Mexican or foreign individuals or entities, acting in the name of, or on the account of the interest of the individuals or entities mentioned above, either in the roll of shareholders, partners, associates, representatives, attorneys-in-fact, legal

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representatives, commission agents, agents, filing managers, advisors, counselors, subcontractors, employees, in any other similar capacity.

4.3. Participants of International Transactions:

Mexican individuals or entities participating, directly or indirectly, in international commercial transactions; and

4.4. Public Servants:

Public Servants participating, directly or indirectly, in federal public procurement procedures.

5. Acts in Violation of the Compliance Statute.

The mentioned Individuals or Entities will violate the Statute when during federal procurement acts they, directly or indirectly, perform any of the following:

- Promise, offer, or give money or a gift, to a public servant or a third party related to such servant, as a consideration for performing or abstaining from an act related with the authority of such public servant or of other public servant, with the purpose of obtaining or maintaining a benefit or advantage, regardless if such money or gift was accepted or the expected result was obtained;
- Promise, offer or give money or a gift to a non-Mexican public servant, or a third party related to such servant, in relation with an international commercial transaction, so that that such servant will refrain from doing any act within the authority of such public servant;
- Perform acts that imply or have the purpose or effect of obtaining an unlawful benefit or advantage during a federal public procurement procedure;
- Participate in federal public procurement notwithstanding a legal impediment to do so;
- Perform or abstain from acts with the purpose or effect to evade requirements or rules in federal public procurement procedures, or simulate their fulfillment;
- Participate directly, but in the interest of another who is impeded from participating, in a federal public procurement procedure, with the purpose of obtaining for the other the benefits derived from such procurement;
- To obligate a public servant, without the right to do so, to give, subscribe, grant, destroy or deliver any document or asset in order to obtain an advantage for the enforcer or a third party;
- Promote or use influence, economic power or political power, either real or fictitious, on any public servant for the purpose of obtaining a benefit or advantage for itself or for a

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third party, regardless of whether it is accepted by such public servant or the expected result is obtained;

- Present documents or information false or altered for the purpose of obtaining an advantage or benefit.

6. Authorities Who will Apply the Compliance Statue:

6.1. Enforcement by The Ministry of the Public Function

The Ministry of the Public Function (*Secretaría de la Función Pública*) will enforce the Statue on the following Entities involving federal procurement activities:

- All Agencies of the Federal Public Administration;
- Office of the Federal Attorney General (*Procuraduría General de la República*);
- State Governments of the United Mexican States;
- Municipal Governments of such States; and
- Counties (Delegaciones) of the Federal District (Mexico City).

6.2. Enforcement by Federal Entities upon acts performed within them:

- House of Senators (*Cámara de Senadores*);
- House of Representatives (*Cámara de Diputados*);
- Nation's Supreme Court of Justice (*Suprema Corte de Justicia de la Nación*),
- Council of the Federal Judiciary (*Consejo de la Judicatura Federal*);
- Electoral Court of the Federal Judiciary (*Tribunal Electoral del Poder Judicial de la Federación*);
- Federal Court of Tax and Administrative Justice (*Tribunal Federal de Justicia Fiscal y Administrativa*);
- Arbitration and Conciliation Boards (*Juntas de Conciliación y Arbitraje*);
- Arbitration and Conciliation Court (*Tribunal Federal de Conciliación y Arbitraje*);
- Agrarian Courts (*Tribunales Agrarios*);
- Federal Electoral Institute (*Instituto Federal Electoral*);
- Federal Superior Auditing Office (*Auditoría Superior de la Federación*);
- National Commission of Human Rights (*Comisión Nacional de los Derechos Humanos*);
- National Institute of Statistics and Geography (*el Instituto Nacional de Estadística y Geografía*); and
- Bank of Mexico (*Banco de México*).

7. Penalties:

7.1. To Individuals:

a) Fines range from 1,000 to 50,000 times the minimum general daily wage in the Federal District (Mexico City) [minimum wage]. This results in amounts from

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US\$4,800.00 to US\$ 240,000.00 [considering a minimum wage is Mex\$ 62.33 in 2012, resulting in @ US\$ 4.80 per day at an average rate of 13 to 1]; and

b) Inability to participate in federal public procurement for no less than 3 months and no more than 8 years.

7.2. To Legal Entities:

a) Fines range from 10,000 to 2'000,000 times the minimum wage, resulting from US\$48,000.00 to US\$9'600,000.00; and

b) Inability to participate in federal public procurement for no less than 3 months and no more than 10 years.

Under certain circumstances, individuals or entities may obtain a reduction of sanctions in case of confession and cooperation with the competent authorities.

8. Final Considerations

With the enactment of Procurement Statue, Mexico is in compliance with the Inter-American Convention Against Corruption of the Organization of American States, the Convention on Combating Bribery of Foreign Public Servants in International Business Transactions of the Organization for Economic Co-operation and Development, and the United Nations Convention Against Corruption.

* * *

We hope you find this information useful for your operations in Mexico.

Respectfully

Jorge Santistevan

Admitted in Illinois, USA & Mexico
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Fulbright Scholar

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We provide Legal Services to international and national companies in all business areas, from initial agreements to complex operations.

Our Services include: company incorporation, corporate governance, contracts, mergers & acquisitions, distribution agreements, credit and secured operations, tax, labor, real estate, health, immigration, intellectual property registrations, and regulatory filings and government claims.

We keep high ethical standards, quality controls, and excellent organization systems.

It's Founder, Jorge Santistevan, has 30 years of experience, and a lawyer admitted to professional practice in both (i) Mexico, and (ii) in the United States (Illinois); with full legal education, and practice experience in reputable law firms in Chicago and Mexico.

He was also a Fulbright Scholar, lecturing on international legal transactions at University of San Diego, and as a Visiting Lecturer at University of Houston.

Our charges consider the useful and fair value of our service to our clients.

Our Professionals work as TEAM participating in the services, according to their knowledge, experience, availability and rates.

We can prepare Budgets once the services are defined. Such Budgets will be considering normal and expected circumstances, without substantial change of instructions, or long and unexpected negotiations.

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We look forward to provide useful and timely services.

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