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General Law of Administrative Responsibilities: legal consequences for non-complying public officials

On May 2015, the constitutional reform that gave rise to the National Anti-corruption System, which aimed at countering corruption at all levels, was carried out through the implementation of a new legal system.

To this end, on July 18, 2016, three new laws were published in the Federal Official Gazette:

- »» General Law of the National Anti-corruption System
- »» General Law of Administrative Responsibilities (GLAR)
- »» Organic Law of the Federal Court of Administrative Justice

In particular, the GLAR provides a very specific strategy to prevent, detect and, where appropriate, punish acts of corruption, which consists in the obligation for public officials to submit three statements regarding their assets and tax status, as well as the proper exercise of their public function.

Such statements are as follows:

1. Asset declaration
2. Conflict of interest declaration
3. Record of annual tax return

Through their asset declaration, public officials expressly manifest their total assets and their value, among other elements. This information allows to determine if such equity is consistent with their office and usual income.

The purpose of the conflict of interest declaration is to provide information on all personal, family or business interests of the public official, in order to identify private concerns that may be at odds with his public duties.

Finally, the record of annual tax return is aimed to verify that public officials are up to date with their taxes and contributions.

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When are they due?

All public officials are required to submit such declarations and records via the electronic system administered by the Secretary of Public Function, within the following time limits:

Asset declaration

- » Within 60 calendar days of taking over their office, public officials shall declare the total of their estate, worth and date of acquisition (Initial Declaration).
- » During May of each year, they should manifest any shift in their patrimony, worth and date of acquisition of new assets, and the means by which they acquired them (Declaration of Asset Modification).
- » Within 60 calendar days of leaving office, they shall manifest the total of his estate, worth and date of acquisition (Conclusion of Office Declaration).

Conflict of interest declaration

Time limits are the same as the asset declaration, except where the public official considers the possible actualization of a conflict of interest, in which case he must submit such declaration.

Record of annual tax return

It is due after the annual tax return has been submitted.

Consequences if not submitted

If the public official does not submit his declaration of assets or interests within the above time limits:

- » An investigation of alleged administrative offenses shall be initiated immediately, and the official will be required to present it.
- » Where the official does not submit his declarations within 30 days of being required, he will be removed from office.
- » In the event that the public official does not submit his Conclusion of Office Declaration, he will be disabled from 3 months to one year.

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Which assets should be included in the Asset declaration?

Public officials must report all their acquired assets and those over which they are regarded as owners, as well as those received or held by spouses or concubines and direct economic dependents, unless they prove they obtained them themselves.

The Secretary of Public Function and the internal control bodies of each public agency may carry out investigations or audits to verify the consistent evolution of the estate and assets of public officials.

Excessive and unjustified patrimony

Where the Asset declaration reflects an unexplained or unjustified increase in regard to their salary, public officials must clarify the origin of such enrichment. In failing to do so, an investigation file will be opened and, based on the disproportion of the enrichment, they may be reported to the Public Ministry.

The investigation

The authority will initiate the investigation ex officio where it finds that the public official may have committed an administrative offense. However, anyone can report it, even anonymously, in which case their identity will be protected.

The investigating authority may have access to all the information it needs to clarify the facts, including classified or confidential information, such as bank, tax, stock exchange or fiduciary data, among others.

Where there is insufficient evidence to consider that an administrative offense has been committed, the case shall be closed and concluded. Otherwise, the investigating authority must classify the offense as serious or not serious and will initiate the administrative responsibility procedure.

Finally, if there is a risk that the public official may conceal, sell or deplete his assets, they may be seized as a precautionary measure.

Concealing enrichment, hiding conflicts of interest, and providing false information are serious administrative offenses

Public officials who lie or withhold information in their declarations in order to conceal the increase in their assets, any conflict of interest, or the unjustified use of assets, commit a serious administrative offense.

The same applies if they submit false information, fail to respond to the authority's requests or deliberately delay the submission of such information.

Administrative sanctions for serious offenses

Sanctions for serious administrative offenses are as follows:

1. Suspension from office for 30-90 calendar days
2. Dismissal from office
3. Financial penalty
4. Temporary disablement as public official and to participate in public works, acquisitions, leases and services for up to 20 years.

Depending on the seriousness of the offense, one or more of the above sanctions may be imposed.

In addition, the judge shall impose a financial penalty when the offense has economically benefited the public official, his spouse, blood relatives, civil relatives or third parties with whom he has professional, work or business ties, as well as his partners or any entity to which he is associated. In such cases, the sanction may be twice the benefits obtained.

On the other hand, if the offense caused damages to the Treasury or public assets, compensation may also be determined.

The financial penalties will constitute tax credits which the Tax Administration Service, or the competent local authority, shall execute through the enforcement procedure.

Illicit enrichment is a crime

Where the investigation authority detects the probable commission of a crime, a report must be filed before the Public Ministry.

Illicit enrichment, for instance, occurs when the public official is unable to demonstrate the legitimate increase in his patrimony or the legitimate source of his assets or those over he is regarded as owner, or assets received or held by his spouse, and direct economic dependents, unless they prove they were rightfully obtained.

It is likely, therefore, that concealed enrichment referred to in the GLAR may also be considered illicit enrichment, in which case the public official may be subject to the following criminal penalties:

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1. Forfeiture of assets whose origin cannot be explained
2. Up to 150 days fine (daily fine = daily net income of the offender at the time the crime was committed)
3. Up to 14 years imprisonment

It should also be noted that the GLAR must be observed not only by public officials. Private individuals and entities are also considered responsible in cases of corruption and impunity and may therefore be subject to the penalties established by law. The matter, with important implications for the private sector, will be discussed in detail in our next newsletter.

**For information regarding this subject, please do not hesitate to contact us at 9178 7000 or through the following e-mail:
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