Chapter 7.

Enforcing integrity: Strengthening Mexico’s administrative disciplinary regime for public officials

Effective, comprehensive public sector integrity frameworks include, not only pillars for defining, supporting and monitoring integrity, but also for the enforcement of integrity rules and standards. This chapter assesses the role of Mexico’s administrative disciplinary regime as a key mechanism for enforcing integrity. It examines the strengths and weaknesses of the national administrative sanctioning system against selected OECD member and partner countries. Recommendations are put forward for consideration with a view to: improving overall effectiveness by avoiding gaps and inconsistencies between regimes and institutions in implementation; strengthening inter-institution co-ordination and capacities; and increasing monitoring and transparency to allow for better oversight and to prevent undue influence over sanctioning decisions.

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.
Introduction: Enforcing integrity to deter misconduct and restore trust

Effective, comprehensive public sector integrity frameworks include, not only pillars for defining, supporting and monitoring integrity, but also for the enforcement of integrity rules and standards. Enforcement measures—namely disciplinary systems and, when applicable, also mechanisms for the recovery of economic losses and damages—are the necessary “teeth” to any country’s integrity framework and are a principal means by which governments can deter misconduct. If applied in a transparent, timely and fair manner, they can also legitimise the existence of governments’ integrity rules and frameworks, serving to strengthen them over time and helping to instil integrity values in individuals and organisations as cultural norms.

Enforcement measures help signal to citizens that the government is serious about upholding the public’s best interests and is worthy of their confidence and trust. Strong enforcement demonstrates that the rule of law applies to all and that public officials cannot act with impunity. This is a particularly important principle to uphold given the strong relationship between citizens’ perceptions of corruption and their trust in government leaders and institutions. Governments must take action therefore to avoid a vicious cycle where continually decreasing levels of trust in institutions lead to greater incentives for (and tolerance of) integrity breaches, such as corruption.

This chapter examines the role of administrative disciplinary regimes as key mechanisms for enforcing public sector integrity frameworks in Mexico. It assesses the strengths and weaknesses of the national administrative sanctioning regime in the country against selected OECD member and partner countries. Recommendations are put forward for consideration with an eye to improve overall effectiveness by avoiding gaps and inconsistencies between regimes and institutions in implementation; strengthening capacities; and increasing monitoring and transparency.

Preventing potential gaps, inconsistencies and undue influence over sanctioning decisions

The recent differentiation between less serious and serious administrative offences can serve to increase both the objectivity and timeliness of sanctioning decisions. However, under this new regime, stronger co-ordination between responsibilities units in internal control bodies, the Ministry of Public Administration (Secretaría de la Función Pública, SFP), administrative tribunals and Specialised Anti-corruption Prosecutor’s Offices will be more necessary than ever, given concurrences between serious administrative and criminal offences.

Public officials in Mexico can potentially be held liable for misconduct under five main types of regime (political, administrative, criminal, civil and labour), depending on the position in government and the type of fault or violation in question. Figure 7.1 provides an overview of the five principal systems, specifying the main laws underpinning each and the public officials who can be liable. For the purposes of this chapter, the term “regime” is used to define the laws, policies (including implementing regulations and norms) and procedures that comprise the type of disciplinary system.
Political regime

As in most OECD member countries, the political regime applies only to certain public officials. In Mexico, for instance, the positions liable under this regime are outlined in Article 110 of the Constitution (the President, members of the Congress, Supreme Court Justices, etc.). Application of the political regime is based on the premise that should such officials violate the principles of the Constitution, they should be sanctioned – in this case with possible impeachment or disqualification following a vote by Congress.

Criminal and civil regimes

Criminal and civil sanctions apply to public officials for misconduct while in the line of duty. Some criminal offences can only be committed by public officials (e.g. abusing public authority towards a citizen), such as in Title 10 in the Mexican Criminal Code. Similarly, the German Criminal Code contains provisions that make corrupt action by public officials a punishable offence. The minimum penalties for public officials taking bribes (Section 332 of the German Criminal Code) are higher than those for non-officials giving bribes (Section 334 of the German Criminal Code). In Mexico, only the President is exempt from penal liability while in office, and the criminal prosecution for select officials (those named in Article 111 of the Constitution) requires that the Chamber of Deputies first approves such proceedings following a vote.

Under the new reforms, specialised anti-corruption prosecutors must be established at federal and state level Justice Departments. Article 109 of the Constitution was amended in 2015 to formally recognise this position. Following Article 113 of the Constitution, Article 10 of the General Law for the National Anti-corruption System states that the national Co-ordination Committee should include the federal Anti-corruption Prosecutor.
Article 35 further requires that states follow suit in their respective local anti-corruption systems. As part of Public Prosecutor Offices, specialised prosecutors are tasked with addressing criminal offences concerning public sector officials and activities. At the federal level, the position was established in 2014 via an Order (Acuerdo A/011/14 from the Procuraduría General de la República, or PGR) from the Attorney General, however (as mentioned in Chapter 2), the position remains vacant awaiting a formal recruitment process and approval from the Senate. The Order provides further details on the specialised prosecutor’s mandate (see Box 7.1 below). A similar unit has existed before, as since 2004, the Attorney General’s Office included a specialised prosecutor for combatting corruption in the public sector. Under the previous law, the Senate did not approve the nomination of the head prosecutor.

Box 7.1. Mandate of federal Specialised Anti-corruption Prosecutor’s Office

Article 109 of Mexico’s Constitution was amended in May 2015 to reflect the new position and office of the Specialised Anti-corruption Prosecutor. It states that the Office is responsible for receiving cases from the Administrative Tribunals that could be considered as criminal offences under the Mexican criminal code.

In 2014, Mexico’s Attorney General established a specialised unit for the Anti-corruption Prosecutor (Acuerdo A/011/14 from the PGR). This position supplanted the previous unit that functioned under Order A/107/04, and which established in 2004 the position and unit of the Specialised Prosecutor for Combatting Corruption in the Public Sector.

Under the new Order, the Prosecutor is tasked with the following mandate:

- Planning, scheduling and organising the operation of the Specialised Anti-corruption Prosecutor's Unit.
- Carrying out the duties prescribed by the Constitution of the United Mexican States, the international instruments in the matter, the laws, the regulations and other legal provisions conferred to the Department of Justice of the federal government.
- Co-ordinating its actions with the administrative units and decentralised organs of the Attorney General's Office.
- Exercising the power to prosecute crimes of the common order in terms of the applicable legal dispositions.
- Directing, co-ordinating and carrying out the investigation of the facts that are likely to constitute one of the crimes of the federal jurisdiction subject to its jurisdiction and common order.
- Formulating the information requirements and documents related to the financial system or fiscal requirements, as referred to in Article 180 of the Federal Code of Criminal Procedure.
- Requesting information from federal, state or municipal public institutions.
- Dictating preventative measures and promoting the necessary mechanisms for the repair of damages.
- Authorising the consultation of reservation, incompetence, accumulation, and separation of previous inquiries, that the agents of the Public Ministry of the Federation propose of their ascription.
Box 7.1. Mandate of federal Specialised Anti-corruption Prosecutor’s Office (cont.)

- Authorising, in the final analysis, the non-execution of the criminal action, after obtaining the opinion of the agent of the Public Ministry of the Auxiliary Federation of the Attorney General of the Republic with respect to the consultations made by the agents of the Public Ministry of the Federation.

- Authorising the formulation of non-accusatory conclusions in criminal proceedings.

- Resolving the consultations that agents of the Public Ministry of the Federation formulate regarding the omissions to make conclusions, of conclusions presented in a criminal process, or of acts whose consequence is the dismissal of the process or the absolute freedom of the accused before judgment is pronounced.

- The cancellation or reclassification of arrest warrants.

- Establishing mechanisms of co-operation and collaboration with federal, state and municipal authorities, within the scope of its competence, in accordance with institutional norms and policies.

- Proposing the conclusion of agreements with public or private institutions or organisations, national or foreign, within the scope of its competence, where the exchange of experience, knowledge and technological advances is privileged.

- Designing and implementing projects, studies and permanent programmes of information and promotion of the culture of denunciation and of legality in matters related to acts of corruption.

- Issuing or subscribing legal instruments that facilitate operation, in accordance with Article 7 of the Organic Law of the Attorney General's Office.

- Proposing to the Attorney General of the Republic the appointment of the heads of administrative units under his/her charge.

- Participating with the competent administrative units and decentralised agencies of the Attorney General's Office in the design of training, updating and specialisation schemes in the area of prevention and combat against corruption.

- Supervising and exercising the powers that correspond to the administrative units attached to it, notwithstanding that they are performed by their respective holders.


Civil liabilities concern the financial consequences of an offence. The wrongdoing of a public official may cause damages to public assets, or result in forfeiture of public property, or damages to third parties for which compensation may be awarded. In Mexico, Articles 1910 and 1916 of the Federal Civil Code hold public officials subject to potential civil law sanctions. There is a difference between economic compensation and fines, as the verdicts of civil cases and fines under the administrative regime are not aimed at recovering losses, but are rather a symbolic sanction for misconduct. Mexico’s administrative disciplinary regime allows for both economic sanctions and fines.
Specialised regimes

The different Mexican police forces (federal and state), judiciary (judges and federal/state prosecutors), military personnel, foreign affairs or intelligence officers have separate disciplinary codes and procedures in place. In Mexico, disciplinary proceedings for judicial officials are governed by the sector’s respective Organic Law (Ley Orgánica del Poder Judicial de la Federación), specifically Article 131, which outlines an official’s responsibilities. The Federal Judicial Council (Consejo de la Judicatura Federal) is responsible for carrying out investigations and sanctions when applicable. The Ninth Chapter of the National Law on Public Security (Ley General del Sistema Nacional de Seguridad Pública) sets forth conduct standards for national police. The same law also establishes that state and municipal governments are responsible for establishing regional and local legislation, which include measures for disciplinary action for their respective police forces. Military personnel are bound to the military justice system (Código de Justicia Militar), which is overseen by the special Prosecutor for Military Justice.

These specialised regimes are common across all OECD member countries, and exist under the rationale that the specific nature of these functions and the responsibilities legally assigned to these positions warrant separate and distinct proceedings. These separate proceedings allow such institutions to maintain their independence and avoid undue political influence or retaliation from holding government leaders accountable. It can be argued that the more the activity of the official has the potential to impinge upon the fundamental rights of citizens or national interests, the more demanding the behavioural standards imposed on them by regulations should be, and the harsher the corrective sanctions (OECD, 2003). Others, however, have argued that separate proceedings necessitate adequate oversight to ensure that they are effectively applied according to law.

Labour law regime

In the private sector, cases of misconduct (including for poor performance) are governed by the employment contract, with any employee-employer disputes falling under the jurisdiction of the National Labour Law and the specialised labour courts. This same jurisdiction can be applied to public officials, as long as their job contracts fall under the remit of this legislation (i.e. most commonly that they are outside of the civil service regime). In Mexico, a disciplinary dismissal under human resource management (HRM) rules and federal employment laws is referred to as “separation from post”, and is usually founded on the basis of poor performance on the part of the public official. In 2014, at the federal level in Mexico, such cases were rare, with only 24 disciplinary dismissals for poor performance. The Federal Employment Law (Ley Federal del Trabajo) grants the Federal Labour Court (the Junta Federal de Conciliación y Arbitraje) jurisdiction over such cases when the official wishes to appeal the decision.

Administrative regime

This chapter specifically concerns the administrative regime, that is, offences or faults committed in a public servant’s line of duty or in public sector activities, which are viewed as potentially more serious infractions due to the consequences they can have on society and the economy. A natural or legal person’s liability under the administrative disciplinary regime therefore is founded on the basis that public officials, and those firms contracted with (or seeking to be contracted with) the public sector, have a number of obligations unique to their status which are different, and perhaps even more stringent, to
those not related to public sector duties or activities. These can include, for instance, the need to demonstrate fidelity to the Constitution and legal order of the country, stricter needs for impartiality, and more demanding standards of personal integrity and fairness in their dealings with the public, their superiors and colleagues (OECD, 2003). Administrative disciplinary regimes are established therefore under the premise that the violation of such principles necessitates a distinct sanctioning system that is tied to their obligations as public officials.

Article 109 of the Mexican Constitution defines an administrative fault as any act or omission that affects the legality, honour, loyalty, impartiality and efficiency of a public official’s post. Until now, the Federal Law of Administrative Responsibilities for Public Servants (Ley Federal de Responsabilidades Administrativas de los Servidores Públicos, LFRASP) has been the law governing offences and sanctioning procedures at the federal level. However, the recently approved General Law on Administrative Responsibilities (GLAR) will apply nationally and come into effect in July 2017. This new law establishes two different sanctioning procedures, depending on the severity of the alleged offence: serious and less serious. Box 7.2 details the classification of the two types of offences.

A second new defining feature of the GLAR is that it applies not only to public officials, but also to any firm or private individual contracting with the public sector (Article 1). In Article 73, the law newly outlines offences for those in “specialised situations”, including candidates running for office, campaign staff or trade union leaders and staff.

**Box 7.2. Classification of serious and less serious offences under Mexico’s General Law on Administrative Responsibilities (to come into effect July 2017)**

Articles 49 and 50 of the GLAR define **less serious offences** as those acts and/or omissions which concern:

- Fulfillment of an officials’ functions, powers and entrusted duties while observing performance, discipline and respect, both to other public servants as well as individuals with whom in contact, in the terms established in the code of ethics.
- Reporting acts or omissions that they may come across in the course of their duties which could constitute administrative offences.
- Heeding the instructions of superiors, provided that they are consistent with the provisions related to public service and do not constitute administrative offences.
- Submitting timely asset, interest and tax declarations as required by law.
- Registering, integrating, storing and caring for documentation and information under their responsibility, and preventing or avoiding its use, disclosure, theft, destruction, concealment or improper irreparable damage.
- Supervising and ensuring that public servants under their direction comply with the provisions of the GLAR.
- Being able to account for and report on the exercise of their functions as defined by relevant policies and laws.
- Collaborating in judicial and administrative proceedings in which they may be a party.
Box 7.2. Classification of serious and less serious offences under Mexico’s General Law on Administrative Responsibilities (to come into effect July 2017) (cont.)

- Ensuring, before the conclusion of procurement contracts, disposal of all kinds of goods, provision of services of any nature, or hiring public services or related to work, that the firm in question is not already under employment, office or commission in the public service. Or, in the case that they are, that this does not impose a conflict of interest as defined by law.

- Damaging or neglecting, without incurring any of the serious administrative offenses outlined as serious offences, the Treasury or the capital of a public entity.

Alternatively, serious offences are defined by Articles 52-64 as those concerning:

- Accepting, obtaining or seeking to obtain, by itself or through third parties, a bribe including any benefits not included in their remuneration as public servant, which could consist of money; values; real or personal property, including through disposal in markedly lower price than it has in the market; donations; services; jobs and other benefits improper for themselves or their spouse, blood relatives, civil relatives or others with whom the official has professional, labour or business partners or partnerships or relationships.

- Embezzlement by which a public official requests or perform acts for the use or ownership for themselves or for the people in the preceding article of public resources, whether these be material, human, or financial.

- Authorising or requesting the diversion of public resources from their intended purposes, whether material, human or financial.

- Misusing information by the official in office (or by the persons mentioned in Article 52) to purchase real estate, furniture and other assets, or, more generally, to improve their conditions and obtain any advantage or private gain. This restriction applies up to one year after the official has left his/her position.

- Abusing their position to generate a profit for themselves or for persons stated in Article 52.

- Causing injury to any person or service public.

- Intervening in decision or duty in which the official holds a conflict of interest.

- Improperly recruiting, selecting, appointing or designating another official who, under law, may not be employed in the public service (i.e. such as those debarred under the sanctions registry).

- Not accurately declaring assets or concealment of conflict of interest.

- Peddling their position and the responsibilities conferred upon them to delay or omit an act, to generate any profit, or seek any private gain for themselves or those mentioned in Article 52.

- Failing to report, or covering up, acts or omissions considered to be administrative offences.

- Providing false or unjustified delayed information in the case of judicial, electoral, internal control, or other requests.

- Obstructing justice by not initiating the corresponding administrative disciplinary proceedings before the competent authority within thirty calendar days from having knowledge of any conduct that would constitute a serious administrative offense; conducting themselves in the investigation an offence; or revealing the identity of an anonymous whistleblower protected under the principles established in this law.

Under the GLAR, the statute of limitations on less serious offences is three years, while for serious offences, officials/individuals may be sanctioned up to seven years following the offence. This is similar to Peru, but less than in some other OECD member countries.

Table 7.1. Statute of Limitations in Mexico’s disciplinary regimes and other countries

<table>
<thead>
<tr>
<th></th>
<th>Peru</th>
<th>Brazil</th>
<th>Germany</th>
<th>Mexico</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Administrative disciplinary regime</strong></td>
<td>3 years (or 1 year from knowledge from HR Office)</td>
<td>4 years (maximum length of proceedings: 2 years; After retirement: 2 years)</td>
<td>No limit (maximum length of proceedings: 2 years; After retirement: 2 years)</td>
<td>3 to 7 years according to the seriousness of the offence</td>
</tr>
<tr>
<td><strong>Administrative functional regime</strong></td>
<td>No maximum length of proceedings</td>
<td>No limit</td>
<td>No limit</td>
<td></td>
</tr>
</tbody>
</table>


Perhaps the most notable reform under the new GLAR is the differentiation between less serious and serious administrative offences. Corresponding sanctions for the two types of offences are outlined in Articles 75 and 78 (see Box 7.3 below for details). For less serious offences, internal control bodies in individual line ministries or public sector organisations, as well as senior management, are responsible for investigating offences, processing disciplinary procedures, and imposing the relevant sanctions. For serious offences, however, under the new regime, Administrative Justice Tribunals are responsible for issuing sanctions. Once the Federal Tribunal of Administrative Justice (Tribunal Federal de Justicia Administrativa, or TFJA) has confirmed the classification as a serious administrative fault, it will admit and substantiate the disciplinary procedure from the probationary stage onwards, and have the authority to request additional evidence that it deems convenient for issuing the final sanctioning decision (Articles 90, 111 and 130 of the General Law on Administrative Responsibilities [Ley General de Responsabilidades Administrativas], LGRA).

Mexico’s Supreme Audit Institution, and at local levels, state and municipal audit institutions, may now also investigate alleged offences, and direct them to tribunals if deemed serious. This was not previously permitted, as audit entities could not conduct audits or investigations during the course of the same fiscal year. Table 7.3 outlines procedures under both the old (federal) and new (nationwide) regimes under the GLAR, along with a comparison of select other OECD member and partner countries. It is also worth noting two public procurement laws: the Law on Acquisitions, Leasing and Services of the Public Sector (Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público, LAASSP) and the Law on Public Works and Related Services (Ley de Obras Públicas y Servicios relacionados con las Mismas, LOPSRM). Both of these laws include various requirements and rules to structure and guide public procurement activities, and include potential administrative sanctions. Chapter 8 discusses sanctions concerning public procurement procedures in further detail.
Box 7.3. Administrative disciplinary sanctions in Mexico (under the GLAR) and selected OECD member and partner countries

For less serious offences, Article 75 of the General Law on Administrative Responsibilities establishes that one or more of the corresponding sanctions can be applied, including:

- Public or private reprimand.
- Suspension of employment or post.
- Removal from office or post.
- Debarment (3 months -1 year) on employment or post, or to participate in public procurement contracts, services or public works.

For serious offences, the potential sanctions are similar, with Article 78 stating that these may include:

- Suspension of employment or post.
- Removal from office or post.
- Economic fine up to 2x the amount of damages.
- Debarment (up to 20 years depending on the amount of damages) on employment or post, or to participate in public procurement contracts.

Article 81 outlines sanctions for individuals (who are not officials) and firms involved in public sector activities (such as through a public procurement procedure). It states that private individuals may be sanctioned with:

- An economic penalty that may reach up to two times worth the benefits obtained or, in case of not having obtained them, for the equivalent of the amount of 100 to 150 000 times the daily value of the unit of measure; and update.
- Temporary disqualification from participating in acquisitions, leases, services or work for a period of not less than three months.
- Compensation for damages and losses caused to the federal, local or municipal administration, or to the assets of public entities.

Firms and corporations may face the following sanctions:

- An economic penalty that can reach up to two times worth the benefits obtained, and in case not obtained, for the equivalent of the amount of 1 000 to 1.5 million times the daily value of the unit of measure.
- Temporary disqualification to participate in acquisitions, leases, services or works for a period of not less than three months nor more than ten years.
- The suspension of activities, for a period of not less than three months nor more than three years, which will consist in detaining, deferring or temporarily depriving individuals of their business, economic, contractual or business activities because they are linked to faults.
- Administrative penalties provided for in this law.
- Dissolution of the respective company, which will consist of the loss of the legal capacity of the corporations.
- Compensation for damages and losses caused to the federal, local or municipal administration, or to the assets of public entities.
Box 7.3. Administrative disciplinary sanctions in Mexico (under the GLAR) and selected OECD member and partner countries (cont.)

OECD member and partner countries provide for these and additional types of sanctions including:

- Fines.
- Demotion in rank (France, Germany and the United States).
- Salary reduction (Germany, the Netherlands) or withholding of future periodic salary increases (the Netherlands, the United Kingdom).
- Compulsory transfer with obligation to change residence (France, Spain, the United Kingdom).
- Compulsory retirement (France).
- Reduction or loss of pension rights (Germany – for retired officials, and Brazil).
- Reduction in right to holiday or personal leave (the Netherlands).

Sources: Mexico’s Civil Service Law no. 30057 of 2013; Mexico’s Organic Law of the National System of Control and of the Comptroller General – Law no. 27785 of 2002 (as modified by Law no. 29622).


Table 7.2. Comparative overview of administrative procedures in Mexico and selected countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Investigations</th>
<th>Sanctioning decisions</th>
<th>Enforcing sanctions</th>
<th>First-instance appeal</th>
<th>Second-instance appeal</th>
<th>Monitoring and providing guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>1) Simplified TCA procedure for minor cases (including admission of guilt). 2) Formal inquiry (sindicancias) by line ministries for less serious offences. 3) Temporary administrative disciplinary process commission (PAD Commission I Brazil) of three civil servants for serious offences.</td>
<td>1, 2) Line ministries for TCA and inquiries. 3) For serious offences, a PAD commission can propose the application of a sanction (including dismissal) to the line ministry and the National Disciplinary Board. These enforcing authorities cannot dissent from the PAD’s proposition without proper justification.</td>
<td>Line ministries and the National Disciplinary Board.</td>
<td>1) Not possible to appeal the TCA procedure. 2,3) First-instance appeal submitted to the authority that applied the sanction, whether it is a line minister or the National Disciplinary Board. This first-instance appeal is called “request for reconsideration”.</td>
<td>Appeals submitted to the superior authority to that of whose act is appealed. This second-instance appeal is called a “hierarchical appeal”. It should be noted that the convicted civil servant can appeal to the judiciary at any time.</td>
<td>Line ministries and the National Disciplinary Board.</td>
</tr>
</tbody>
</table>
Table 7.2. Comparative overview of administrative procedures in Mexico and selected countries (cont.)

<table>
<thead>
<tr>
<th>Country</th>
<th>Investigations</th>
<th>Sanctioning decisions</th>
<th>Enforcing sanctions</th>
<th>First-instance appeal</th>
<th>Second-instance appeal</th>
<th>Monitoring and providing guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>Individual line ministries.</td>
<td>Individual line ministries.</td>
<td>Individual line ministries.</td>
<td>Individual line ministries.</td>
<td>For civil servants, the Administrative Court; for those outside of the general employment framework, employment tribunals.</td>
<td>Federal Ministry of the Interior.</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Individual line ministries.</td>
<td>Individual line ministries.</td>
<td>Individual line ministries.</td>
<td>Internal appeals board in each line ministry.</td>
<td>Administrative courts; District Court; Administrative High Court.</td>
<td>Individual line ministries and the Ministry of Interior.</td>
</tr>
<tr>
<td>Mexico less serious offences (under new GLAR legislation)</td>
<td>Internal control bodies (SFP), ministries, external audit bodies.</td>
<td>Internal control bodies (SFP), ministries.</td>
<td>Individual line ministries.</td>
<td>SFP and internal control bodies in ministries.</td>
<td>Administrative Justice Tribunals.</td>
<td>SFP, audit institutions.</td>
</tr>
</tbody>
</table>


As described previously, under the new administrative regime, it is likely that some serious offences will also qualify as potentially criminal offences under the penal code, requiring notification to, and involvement of, the Attorney General’s Office and, specifically, the newly created Office of the Special Prosecutor for Anti-corruption. States will also be required to establish Special Anti-corruption Prosecutors. The legal principle of *non bis in idem* signifies that an official may not be sanctioned twice for the same fault. However, this principle does not always preclude an official from being sanctioned or punished under several different legal regimes for misconduct. In the majority of cases, a criminal liability incurred while performing public service functions also entails an administrative liability, with the latter range of possible faults broader than the former. It is essential that clear legal and procedural frameworks exist in such circumstances to...
avoid public officials remaining in their position when they have a criminal conviction that could affect the performance of their public duties.

In the majority of OECD member countries, it is mandatory for affected government agencies to immediately notify law enforcement of an alleged criminal offence. If a case is taken up by law authorities, administrative proceedings can then be suspended until a verdict under the criminal regime is reached, and an administrative decision taken afterwards on the basis of the criminal verdict. While the criminal verdict is pending, and depending on the severity of the offence, public officials may either be temporarily suspended without pay, or be relocated to another post. If a temporary suspension is instituted, and should the public official be found innocent, he/she most often has the right to be awarded back-pay.

Clarifying the legal and procedural frameworks for serious administrative offences should be a key priority for the NACS Co-ordination Committee, particularly the SFP, tribunals and specialised anti-corruption prosecutors, and especially since the respective policies adopted at the federal level may serve as the model for states. Without such co-ordination, Mexico risks potential gaps and inconsistencies (i.e. that cases are not taken forward under any regime, and/or that actions taken in one regime are not reflected or recognised by another.)

It is critical that legislation and procedures are clarified and communicated, and that formal co-ordination mechanisms be established. Reforms should ideally be centred around critical milestones including:

- **The outset of the investigation**: a joint decision between government and the Attorney General’s Office concerning the case and the possibility of temporary suspension. If the Specialised Anti-corruption Prosecutor’s Office does not pursue a case, government authorities in the SFP, state controllers, and tribunals should be immediately aware so as to consider a potential independent disciplinary action. On the other hand, should a criminal case be taken forward, greater inter-institutional co-operation is needed in the exchange of information as potential evidence for that investigation.

- **Verdict concerning conviction/exoneration**: the SFP, state controllers and tribunals should be made aware in a timely manner in order to consider implications for administrative disciplinary sanctions. In some countries, such as Germany, administrative sanctions are automatic following a criminal conviction. Civil servants are immediately suspended from service once the judgement of a German criminal court sentences them to imprisonment of at least one year on charges of a deliberate crime. The same holds true for a sentence of imprisonment of at least six months on charges of: a deliberate act punishable under the provisions of crimes against peace; high treason; endangering the democratic state, rule of law or national security; or if the crime involves an official act in the civil servant’s position (including corruption). Mexico’s NACS Co-ordination Committee could further study and consider instilling similar automatic administrative offences as a policy or, at the very least, consider a required administrative disciplinary hearing directly under the jurisdiction of tribunals.
Robust performance measurement of the administrative disciplinary regime is urgently needed to ensure that it is being implemented correctly and is free of undue influence over the classification of offences. This includes data and oversight on both administrative and criminal offences concerning public officials.

The new administrative regime is aimed at strengthening enforcement for offences, particularly serious offences, by processing such cases in specialised courts (i.e. outside of the executive branch and separate from the organisation where the alleged offence took place). Under the previous regime, while internal control staff were, in principle, meant to provide objective oversight over their organisation’s activities, ultimately ministers and senior management maintained influence over the implementation of the final sanctioning decision (see Chapter 6 on the need to improve the independence of internal control bodies and increase the professionalisation of staff). By placing responsibility for sanctioning decisions outside of the ministry or organisation in question, it is hoped that undue influence over decisions may be prevented and the validity of decisions reached concerning serious offences will improve. Furthermore, it is hoped the new system improves effectiveness and efficiency (i.e. fewer delays, appeals or mistrials, etc.).

If implemented effectively, placing responsibility for sanctioning decisions outside of the ministry or organisation in question could be a positive advancement for the regime, however, the new law leaves the initial decisions on how to classify and proceed with cases, as well as the preliminary investigations that will support these decisions, in the hands of internal control bodies, line ministries/organisations and the Supreme Audit Institution. In bringing a case forward to the TFJA, the investigating bodies (the SFP, the internal control bodies, or the Supreme Audit Institution [Auditoría Superior de la Federación], ASF) are required to provide the necessary evidence to the tribunal to justify that the administrative fault(s) allegedly committed do constitute serious offences. The TFJA may even require the release of additional evidence (Articles 112, 115 and 194, section 7 of the LGRA) to support this justification. This process leaves a great deal of discretionary power in the hands of investigating bodies, and therefore the interpretation on the classification of the offence could potentially be unduly influenced, with some serious cases not being referred to administrative tribunals for proceedings. There is room for interpretation in the new classification system, with a risk that it is applied in an inconsistent manner. For instance, misuse of information for personal gain (a serious offence) could also be classified as mismanagement of information (a less serious offence). Moreover, there is a risk of serious offences being disaggregated into several less serious offences.

The limited data available on sanctioning suggest that potential issues may exist even before they arrive to internal control bodies or tribunals. In 2014, for instance, the majority of federal-level sanctions in Mexico (about 71%) were issued for failure to complete conflict of interest declarations, with 21% issued for administrative negligence. Abuse of authority, failure to follow budgetary or procurement procedures, and bribery or extortion combined constituted a relatively smaller share of sanctions (Figure 7.2).
These statistics may suggest that in Mexico, some more serious offences either: 1) may not be detected; 2) are not being put forward for disciplinary action; or 3) are not being sanctioned (i.e. case is dismissed after initial preliminary investigation or in appeal). Comparisons with selected OECD member and partner countries demonstrate a higher percentage of sanctions given for bribery and corruption (Figure 7.3). OECD studies suggest that high-risk areas for integrity breaches are not being reflected in sanctions, namely integrity violations related to public procurement. The recent OECD Foreign Bribery Report identified the majority of bribes (over 50%) as being related to public procurement contracts. The World Bank’s Enterprise Survey reported that in Mexico in 2010, 35% of firms surveyed were asked to pay a bribe for a government contract. However, sanctions related to public procurement and bribery combined currently reflect a marginal share of total sanctions as per these data.
It is difficult to assess where the potential gaps or inconsistencies occur without performance indicators on the effectiveness and timeliness of the system. Unavailable data at the state level is also a source of ambiguity. Key performance indicators on the functioning of the regime could help monitor the impact of the ongoing reforms and identify bottlenecks and barriers. For example, further information on where initial reports of potential offences originated (i.e. citizens, whistleblowers, internal audits, external audits, line managers/supervisors, etc.) could help the SFP ensure that existing links between detection and enforcement mechanisms are strong. Data on average case proceedings and cases dismissed could also point to potential unaddressed challenges.

To ensure that preliminary investigations are held to the highest standards, and to ensure the accurate applicability of the new law, the NACS Co-ordination Committee (led by the SFP and tribunal) should establish and publish timely and accurate performance information on the functioning of the administrative disciplinary regime, especially including data on the extent to which initial reports of potential offences are duly investigated. An additional benefit of this exercise would be to promote accountability and demonstrate commitment to integrity values by communicating to the public the performance of enforcement mechanisms; such data should be made public on the national digital platform.

Defining the performance measurement framework, and collecting the necessary data/evidence for assessing the performance of administrative disciplinary regimes, can be challenging. Particularly as different institutions are now responsible for different types of cases, which makes case tracking and the compilation of data across time difficult. Centralising data across internal control bodies and tribunals is an important

Notes: In Brazil, only sanctions for dismissal are represented and exclude sanctions for state-owned enterprises. Data for the Netherlands may slightly overestimate the ratio, since data are based on proven sanction decisions, not necessarily implemented sanctions decisions.

Source: Based on information from the Dutch Ministry of the Interior and Kingdom Relations and the Brazilian National Disciplinary Board.

OECD INTEGRITY REVIEW OF MEXICO: TAKING A STRONGER STANCE AGAINST CORRUPTION © OECD 2017
Selecting and applying a set of standard key performance indicators (KPIs) and standard guidelines for data collection could help overcome these challenges and should be considered as a priority by the co-ordination committee, SFP and the federal tribunal. Box 7.4 below highlights some commonly-used performance indicators from the field of justice, which could be considered by these institutions going forward.

### Box 7.4. Potential key performance indicators for evaluating administrative disciplinary regimes

No single indicator can be useful in isolation, instead, a set of indicators must be assessed as a whole, along with contextual information, to be analysed and interpreted more accurately.

#### KPIs on effectiveness

- **Share of reported alleged offences ultimately taken forward for formal disciplinary proceedings**: Not all reported offences may be taken forward following a preliminary investigation or hearing; however, the share of cases not taken forward, especially when analysed by area of government or type of offence, may shed light on whether valid cases are successfully entering the disciplinary system in the first place.

- **Appeals incidences and rates**: A measure of the quality of sanctioning decisions and the predictability of the regime. Common metrics include the number of appeals per population (or civil servants liable under the disciplinary law), and cases appealed before the second instance as a percentage of cases resolved in first instance.

- **Inadmissible or discharged cases**: The share of cases declared inadmissible (as well as a disaggregation for what grounds were provided for dismissal) can be considered an indication of the quality and effectiveness of procedures and compliance of the government with disciplinary procedures.

- **Overturned decisions**: A second common measure on the quality of sanctioning decisions is the share of appealed cases where initial decisions were overturned. This can signify, in addition to failure to follow proper disciplinary procedures, the sufficient proportionality of sanctions.

- **Recovery**: In the case of economic fines, the share of funds recovered or recuperated as per original sanctioning decision can indicate the effectiveness of government in carrying out sanctions.

- **Clearance rates**: Another common indicator of effectiveness, this refers to the sanctions issued over the cases initially reported. It serves as a proxy for identifying “leaky” systems, whereby cases reported are not brought forward and/or to conclusion.

#### KPIs on efficiency

- **Pending cases**: The share of total cases which are unresolved at a given point in time can be a useful indicator of case management.

- **Average/median length of proceedings (days)**: The average length of proceedings for cases is estimated with a formula commonly used in the literature: \( [(\text{Pending}_1+\text{Pending}_t)/(\text{Incoming}_t+\text{Resolved}_t)] \times 365 \).

- **Average spending per case**: Proxies for financial efficiency can include total resources allocated to the investigation and processing of administrative disciplinary procedures divided by the number of formal cases. Other methodologies include total spending on disciplinary proceedings per civil servant liable under proceedings.
Box 7.4. Potential key performance indicators for evaluating administrative disciplinary regimes (cont.)

KPIs on quality and fairness

- In addition to some of the aforementioned indicators (i.e. high appeals rates or admissible/dismissed cases could suggest poor procedural fairness), the following qualitative data could also prove useful. The Council of Europe has produced a “Handbook for conducting satisfaction surveys aimed at court users” that could offer insights for similar exercises on administrative disciplinary regimes:
  - Perception survey data on government employees (including managers) on their perceptions of the fairness regime, the availability of training opportunities for them, etc.
  - Perception survey data from public unions, internal auditors/court staff (for serious cases), etc.


Magistrates and staff of administrative justice tribunals should be held to the highest standards of transparency to prevent conflict-of-interest situations with cases, and be held responsible for the timely resolution of conflict-of-interest situations. As such, the functioning of the tribunal’s judicial council on disciplinary matters for magistrates and staff should be equally transparent to the public.

In order to ensure fairness and objectivity, administrative justice tribunals will need to ensure that they adhere to principles of independence; this will be critical in the transition to the new model. Adhering to these principles will entail a clear legal mandate for the tribunals, the objective and transparent assignment of magistrates to cases, training and adequate remuneration. High-performing internal judiciary committees will audit decisions and investigate conflicts of interest and, if necessary, discipline judges and staff. Greater transparency of assets and potential conflicts of interest could also improve the fairness and legitimacy of the new regime. As discussed in Chapter 3, new requirements are outlined in the General Administrative Responsibilities Law, where it is understood that magistrate and tribunal staff will be held to the same disclosure standards as other officials.
In addition to disclosures, as discussed in Chapter 3, it will be more important than ever that the conflict-of-interest resolution policy for tribunals is clearly communicated with the public and magistrates/staff, effectively enforced, and backed by the necessary training efforts. Tribunals should be transparent with their own respective disciplinary proceedings for magistrates and staff, with annual reports and statistics. This will help set the tone on values for newly formed institutions, ensure trust in the new regime, and maintain the legitimacy of sanctioning decisions.

Until now, internal control bodies have faced challenges in effectively carrying out investigations for disciplinary matters citing difficulties in accessing financial and tax information. The National Anti-corruption Committee should urgently ensure that investigative bodies have direct access to relevant data in order to carry out timely and complete investigations.

Article 95 of the revised GLAR states that internal control bodies should have access to the required information necessary for their investigations. Article 31 states that investigative bodies should be able to adhere to formal agreements with other relevant bodies for the exchange of information in order to verify asset and interest declarations. Such agreements, which have not existed until now on a centralised basis, have the potential to vastly facilitate investigations. Currently, as stated in interviews with the OECD, internal control bodies, responsibilities units, and audit staff responsible for investigations have had challenges in accessing the relevant information. In some cases, requests for information were channelled through the ministries’ internal affairs units, which held the legal right to make such requests to financial or tax institutions.
The NACS Co-ordination Committee should prioritise this issue and help to centralise agreements and establish clear channels for timely information sharing so that individual organisations do not have to approach external parties bilaterally. As such, the committee should also clarify the role of internal affair units in investigations which, until now, has not been addressed by the GLAR. If internal control staff were given direct access, it would be essential that security provisions are implemented to protect the privacy of those accused during ongoing investigations. Investigative staff should receive specialised training in forensic accounting and privacy/data issues (see section on capacity building).

**Following through on administrative sanctions to ensure deterrence and restore trust in government**

After a sanctioning decision is reached, internal control bodies, the SFP, and administrative tribunals are responsible for carrying out (non-economic) sanctions in co-ordination with senior management in the official’s respective line ministry or public sector entity (see Table 7.1 for institutions responsible for each phase of the disciplinary regime). In Mexico, economic sanctions are carried out in collaboration with (or directly through) national tax administrations (the *Servicio de Administracion Tributaria*, SAT). The co-ordination between offices involved in the procedure is followed by written notifications, and since 2012 is tracked as procedural policy published in the Official Federal Daily.

The number of economic sanctions issued increased between 2006-2011, with a decrease thereafter. During this decline, the share of sanctions recovered increased but remained low, always below 1.5% (see Figure 7.5). The low rate of recovery of economic sanctions can be attributed to several causes, namely: unreported collection actions, ongoing legal proceedings which suspend collection, efforts not being made to obtain the guarantee of tax credits, incomplete or erroneous information provided to the tax authority on the occasion of the presentation of the remedies, failure to locate the debtor for recovery, and overturned sanctioning decisions by federal courts.

**Figure 7.5. Economic sanctions issued and share recovered, 2006-2014, sanctions shown in Mexican pesos**

![Graph showing economic sanctions issued and share recovered from 2006 to 2014](image)

*Source: Data provided by the SFP.*
This approach differs from some other OECD member countries, where fines are deducted directly from pay. In the United States, for instance, federal regulation provides that when the head of an agency, or his/her designee, determines that an employee, because of disciplinary wrongdoing, is indebted to the administration, the amount may be collected in monthly instalments by deduction from the employee’s salary.

- In Brazil, minor penalties, such as written monition and suspension for up to 30 days, can be applied after a sindicância (i.e. formal inquiry) has been concluded, and in accordance with principles of due process of the law. Middle to senior level managers usually possess the legal authority to enforce these sanctions. Only senior authorities (usually ministers or equivalent, or the board) can apply the most serious sanctions reached under the temporary administrative disciplinary process commission (PAD) proceedings (see Table 7.2). For economic fines in Brazil there are two sorts of penalties: Restitution of damage caused by the accused: if the damage is already quantified, the civil servant that caused the damage will respond to a process called “Tomada de Contas Especial”, or TCE (special accounts taking) in order to indemnify the loss incurred by the administration. It does not constitute a disciplinary process and does not require previous disciplinary measures.

- Loss of salary(ies) as a result of a penalty of suspension: if the civil servant is penalised with suspension, he/she will not receive the wages corresponding to the suspension period. At the authority’s discretion, this penalty can be converted into a fine of 50% of the salary, in which case the civil servant will have to report for work as usual.

In both cases, the amount due is directly deducted from pay and can be divided in monthly instalments on request.

The Co-ordination Committee should investigate this issue in greater detail. Having better performance information, as mentioned before, would facilitate such evaluations. For instance, limited data are available on the application of non-economic sanctions. It is important that the rate of application of sanctions is increased as a deterrent to future misconduct. Enforcing sanctions set an example and deter future similar actions. The primary aim of any organisational integrity management framework is not so much to identify integrity violations, including corruption, from the past (although this might sometimes be necessary), but rather to prevent integrity violations in the first place (OECD, 2009). There is a vast amount of literature analysing the incentive structure of rational actors for violating rules. In such analyses, it is argued that offenders weigh the benefits of the corrupt act against the cost (severity) of sanctions in terms of the likelihood of detection and sanctioning, as well as the celerity of the sanction (Becker, 1974). Without increasing the costs of corruption through assurance in the application of sanctions, corruption may continue and become increasingly generalised. Application of economic sanctions contributes to covering economic damages caused by misconduct or corruption.

Ensuring the effective enforcement of sanction decisions is key to restoring trust in government and demonstrating that sanctions are not merely “window dressing”. The objective here is not so much about deterrence or recovery for damages, but rather sending a signal that the government is serious about addressing integrity in a systematic and comprehensive, rather than ad hoc, way. It is about instilling confidence in the existence of an indiscriminate system. Investments made to prevent corruption and monitor compliance are not rhetoric or sunk costs, but part of a broader integrity
framework. To public officials, this shows both commitment to values and fairness (all would be treated equally). From the point of view of citizens, this demonstrates that the government as a whole is not corrupt. Impunity for the corrupt acts of individuals can be seen by citizens as a sign that government is corrupt (or incompetent) for its inability to act. It also legitimises government decision making in the eyes of citizens. Misconduct can potentially make certain government decisions null and void (OECD, 2003). Under this logic, disciplinary investigations and sanctioning through administrative regimes can provide the basis for reversing the actions ex post (i.e. the granting of a public contract) and correcting decisions.

Building capacities to ensure the effectiveness and sustainability of reforms

The new GLAR reforms should be backed by larger-scale initiatives for professionalisation and capacity building, and backed by adequate resources. This will particularly be the case at the sub-national level, where some states will establish administrative tribunals for the first time.

As mentioned earlier, while the procedures for serious offences may fall to tribunals under the new GLAR, internal control bodies and management in organisations will remain responsible for processing less serious offences, as well as for preliminary investigations for all offences with considerable influence over the initial stages of a case. However, there are several issues that threaten the effectiveness and objectivity of internal control staff, including uncompetitive wages, lack of training, understaffing, and high turnover. Tribunal staff will require training as their caseload increases and they are required to take on new types of cases under a new regime. New magistrates and staff will need extensive training. New tribunals established at the state level in the coming years will particularly require ambitious capacity-building efforts as newly created institutions.

Having the sufficient, as well as the “right”, capacities in place is a clear requirement for a successful disciplinary regime. In order to be effective, the disciplinary regime should count on an adequate number of staff whose professional profiles reflect the mandate and tasks required under law or policy. In relation to disciplinary regimes, this may translate into human resources experts, internal control and audit staff, investigators, subject-matter experts (for particularly complex cases), financial experts, IT specialists, managers/co-ordinators and support staff. Acquiring the right number and mix of staff is a challenge, particularly in times of budget constraints, but should be weighed against the costs of non-compliance (i.e. higher losses due to integrity breaches and other offences).

As such, the NACS Co-ordination Committee, and particularly the SFP and federal administrative tribunal, should design and implement a capacity-building strategy to professionalise and train staff implicated in the disciplinary regime. Box 7.5 demonstrates the case of Brazil, which considerably scaled-up disciplinary reforms in response to the creation of the National Disciplinary Board. Over 12 000 federal officials were trained as part of the implementation process. Box 7.5 highlights the cases of the United Kingdom and Australia, which provide user-friendly tools to managers and staff concerned with disciplinary matters. Managers throughout the public sector should receive training on disciplinary proceedings to ensure that cases are brought forward to internal control bodies in the first place.
In addition to training, Chapter 6 contains further recommendations on professionalising internal control staff, particularly by incorporating them under the civil service regime to ensure job security and improve their independence from line ministers.

In order to be successful, capacity-building efforts will require sufficient budgetary resources, which, until now, have not been allocated. These should not be considered as costs, but rather as an investment in ensuring the effectiveness of the reforms and creating a genuine deterrence against corruption, which greatly costs governments in foregone revenues and losses from theft and fraud.

**Box 7.5. Large-scale training for Brazil’s National Disciplinary Board and SisCor**

The disciplinary arrangements for public civil servants of Brazil fall under the remit of the Office of the Comptroller General of the Union (CGU), established in 2003 under the Single Judicial Regime of Federal Law 8.112/90. The CGU aims to enhance transparency and defend public assets through both preventative and punitive measures. With its jurisdiction limited to the federal executive branch, the CGU houses the Internal Control Secretariat, the Transparency and Corruption Prevention Secretariat, the Ombudsman Office and the National Disciplinary Board.

Prior to the establishment of the National Disciplinary Board in 2005, the responsibility of disciplinary and integrity-related activities were fragmented across federal government agencies, and subject to variations in their application and impact. The lack of central co-ordination and trained staff needed for consistent disciplinary action contributed to costly and lengthy processes and public distrust in the objectivity and effectiveness of disciplinary measures.

The National Disciplinary Board was established with the responsibility of overseeing the implementation of the centralised federal executive branch’s disciplinary system: SisCor. Activities under SisCor are related to the investigation of irregularities by civil servants and the enforcement of applicable penalties. SisCor is endowed with legal powers to supervise and correct any ongoing disciplinary procedures and to apply sanctions through its 150 employees across the central department, 20 sectoral units and 47 sectional units located within federal agencies (corregedorias seccionais).

**The structure of Brazil’s federal disciplinary system (SisCor)**

The centralisation of oversight under SisCor has been deemed as one driver in improving the effectiveness of the disciplinary regime, as well as consistency in the application of sanctions. SisCor has trained almost 12 000 civil servants, which has been mirrored by a substantial increase in investigative capacity and the number of civil servants currently under investigation, an increase in the number of expulsive sanctions applied, and a reduction in the annulment and reinstatement rates. The automation of the Administrative Disciplinary Process (CGU-PAD) has reduced processing times by 20%.
Box 7.5. Large-scale training for Brazil’s National Disciplinary Board and SisCor (cont.)

The success of the National Disciplinary Board has been, to a large extent, due to the existence of effective sectional units within agencies, which have helped to supervise, raise awareness around the role of the National Disciplinary Board, and balance entity-level responsibility with that of the National Disciplinary Board. Under SisCor, Brazil has seen the creation of an Anti-Nepotism Act, a simplified procedure for minor offences and online disclosures for national policies on transparency and integrity that are upheld through the Right of Access to Information Act.

The National Disciplinary Board is currently supporting further reforms to Law 8.112/90 to address gaps in legislation around issues not included in the scope or insufficiently addressed originally, such as cybercrimes, moral hazard (bullying), sexual harassment, racial segregation and administrative transactions.

Source: information provided by National Disciplinary Board, Brazil

Box 7.6. Strengthening capacities: Providing guidance on disciplinary matters

The United Kingdom’s Civil Service Management Code recommends compliance with the Advisory, Conciliation and Arbitration Service’s (ACAS) Code of Practice on Disciplinary and Grievance Procedures (ACAS, 2015), and notifies departments and agencies that it is given significant weight in employment tribunal cases and will be taken into account when considering relevant cases. ACAS, an independent body, issued the code in March 2015, which encourages:

- Clear, written disciplinary procedures developed in consultation with stakeholders.
- Prompt, timely action.
- Consistency in proceedings and decisions across cases.
- Evidence-based decisions.
- Respect for rights of the accused: right to information, legal counsel, hearing and appeal.

The code also contains guidance on how to interact with employees under investigation (i.e. providing information, evidence, allowing a companion to the hearing, role of the companion at hearings, etc.), which institutions to contact during the process to ensure due diligence and that the employees’ rights are respected, how to apply sanctions fairly (i.e. consistently, progressively and proportionately), how to handle special cases (i.e. cases of misconduct by trade union members, etc.), and what proceedings to follow in relation to potential criminal offences.

Australia’s Public Service Commission has also published the Guide to Handling Misconduct, which provides clarifications of the main concepts and definitions found in the civil service code of conduct and other applicable policies/legislation, as well as detailed instructions to managers on proceedings (see below workflow). The guide also contains various checklist tools to facilitate proceedings for managers such as: Checklist for Initial Consideration of Suspected Misconduct; Checklist for Employee Suspension; Checklist for Making a Decision about a Breach of the Code of Conduct; and Checklist for Sanction Decision Making.
Box 7.6. Strengthening capacities: Providing guidance on disciplinary matters (cont.)

Summary of proposals for action

Disciplinary rules and procedures are essential components of a country’s policy framework for public sector integrity. They are the “teeth” needed to deter misconduct and, perhaps most importantly, demonstrate to citizens and public servants that government commitments to upholding integrity values are not merely empty promises. In order to improve its current disciplinary system and attain the respect and trust of citizens and public servants, Mexico may consider taking the following actions:

**Preventing gaps, inconsistencies and undue influence**

- Clarifying the legal and procedural frameworks for serious administrative faults that could also be considered criminal offences, particularly around the outest of the investigation and the criminal convictions or exonerations.
- Establishing data collection and key performance indicators to assess that the new regime is being conducted effectively and without undue influence, with particular emphasis on determining whether cases are being brought forward to internal control bodies and whether these are effectively moved forward if warranted.
- Conducting regular performance audits over the administrative disciplinary regime, and publically disclosing data and key performance indicators for external oversight and review, particularly on the NACS digital platform.
• Ensuring magistrates and staff of administrative justice tribunals are aware of organisational policies for the resolution of conflict of interest, and receive regular training.

• Ensuring full transparency of the disciplinary regime of tribunals with public annual reports.

• Clarifying the role of internal affairs units in line ministries regarding the investigative process in accessing tax and financial information.

• Facilitating formal agreements between institutions to ensure investigative staff can access relevant information for investigations, and establishing clear procedures and channels for information sharing.

**Following-through on sanctions**

• Urgently examining the reasons behind the low rate of recovery of economic sanctions and applicability of non-economic sanctions.

• Consider automatic deductions of economic sanctions.

**Investing the necessary resources and building capacities**

• Considerably scaling-up capacity-building efforts for investigative bodies on key skillsets, such as forensic auditing.

• Professionalising internal control staff by ensuring their job security, merit-based hiring, competitive salaries, and performance evaluations.

• Adequately investing in capacity building for managers on disciplinary proceedings to help ensure that cases are brought forward to internal control bodies.

• Adequately investing in capacity building, infrastructure and IT for tribunals given their new mandate, particularly at the sub-national level.

• Providing tools and user-friendly guidelines to managers on administrative disciplinary matters, their roles, and the procedures they should be expected to follow.
References


Further reading

