



Reformas anticorrupción en México: introducción a la Ley de Fiscalización y Rendición de Cuentas de la Federación

Anticorruption reforms in Mexico. Introduction to the Law of Fiscalization and Accountability of the Federation

Reformas anticorrupção no México: introdução à Lei de Fiscalização e Responsabilização da Federação

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Resumen

El objetivo de este trabajo es ofrecer al lector una visión amplia de la estructura y los títulos que constituyen la Ley de Fiscalización y Rendición de Cuentas de la Federación (2009). Para ello, se explican los principios esenciales establecidos en cada uno de sus preceptos, así como las atribuciones y facultades de la Cámara de Diputados del Congreso de la Unión, la Comisión de Vigilancia y de la Auditoría Superior de la Federación y los organismos públicos encargados de la fiscalización de la cuenta pública. En la conclusión se señala que esta ley viene a representar un instrumento jurídico muy útil para fortalecer el lineamiento normativo de las autoridades públicas y para intentar reducir a su mínima expresión el fenómeno de la corrupción en el país.

Palabras clave: atribuciones, cuenta pública, facultades, fiscalización.

**Abstract**

The objective of this work is to offer the reader a broad view of the structure and the titles that constitute the Law of Fiscalization and Accountability of the Federation (2009). For this, the essential principles established in each of its precepts are explained, as well as the attributions and faculties of the Chamber of Deputies of the Congress of the Union, the Surveillance Commission and the Superior Audit of the Federation and the public organisms in charge of the audit of the public account. The conclusion states that this law represents a very useful legal instrument to strengthen the normative guidelines of public authorities and to try to reduce the phenomenon of corruption in the country to its minimum expression.

Keywords: attributions, public account, faculties, fiscalization,

Resumo

O objetivo deste trabalho é oferecer ao leitor uma visão ampla da estrutura e dos títulos que constituem a Lei de Fiscalização e Responsabilização da Federação (2009). Para isso, são explicados os princípios essenciais estabelecidos em cada um dos seus preceitos, bem como as atribuições e faculdades da Câmara dos Deputados do Congresso da União, a Comissão de Fiscalização e a Auditoria Superior da Federação e os organismos públicos encarregados da auditoria da conta pública. A conclusão afirma que esta lei representa um instrumento legal muito útil para fortalecer as diretrizes normativas das autoridades públicas e tentar reduzir o fenômeno da corrupção no país à sua expressão mínima.

Palavras-chave: atribuições, contas públicas, poderes, fiscalização.

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Introduction

In the transitional provisions that gave rise to the Decree of 2016, by means of which various constitutional reforms were carried out - fundamentally focused on the fight against corruption that had been established since 2015 (Official Gazette of the Federation [DOF], 27 of May 2015) - it was established that within a year, counted from the coming into force of the reforms, the Congress of the Union should not only approve the package of general laws related to the National Anticorruption System, but also make the adjustments and reforms necessary to apply them.

For this, and derived from the mandate of the federal Executive, it corresponded to the LXIII Legislature, in an extraordinary period, to begin with the creation of the Law of Fiscalization and Accountability of the Federation (2009), which was conceived as "the main instrument normative of parliamentary control regarding the analysis of the federal public account that falls, as one of its exclusive powers, in the Chamber of Deputies by virtue of the sovereign national representation it holds "(Commission of Surveillance of the Superior Audit of the Federation (CVASF) Magazine Equilibrio Coahuila, number 18, 2016, p.10).

It should be noted, of course, that although the major audit is an attribution of the Legislative Power, it delegates review and control tasks to a technical body called Superior Audit of the Federation (ASF)¹. The mechanism is simple, since the review of the public account is carried out by the Chamber of Deputies through this audit, which has the purpose of evaluating the results of the financial management, to verify if this has been adjusted to the criteria indicated in the Budget of Expenditures of the Federation and verify the fulfillment of the objectives contained in the programs.

This means that the Law of Fiscalization and Accountability of the Federation has as its objective, in particular, "the control of public resources, their administration, management, custody and application of income, expenditures and funds in order to verify that they conform to the legal dispositions and to the fulfillment of the corresponding programs

¹La Auditoría Superior de la Federación es el órgano técnico de fiscalización de la Cámara de Diputados del Congreso de la Unión al que se refieren los artículos 74, fracciones II y VI, así como 79 y 109 de la Constitución Política de los Estados Unidos Mexicanos.

"(Commission of Surveillance of the Superior Audit of the Federation (CVASF) Magazine Equilibrio Coahuila, number 18, 2016, p.10).

In other words, it represents a set of actions whose task is to verify that the economic and financial activity has been carried out in full compliance with the principles of efficiency, economy, transparency, efficiency and honesty to meet the objectives for which they were intended, such as it is established in article 134 of the Constitution.

This law was published in the Official Gazette of the Federation on July 18, 2016 - which abrogated the original published in 2009 - and it establishes, in its first article, to regulate articles 73 (fraction XXIV), 74 (fractions II and VI) and 79 of the Political Constitution of the United Mexican States (1917/2017) in matters of review and supervision in the following aspects:

- I. The public account ².
- II. Irregular situations that are reported in terms of this law with respect to the current fiscal year or previous years other than the public account under review.
- III. The application of the formulas for distribution, administration and exercise of federal participations.
- IV. The destination and exercise of the resources from financing contracted by the states and municipalities, which have the guarantee of the Federation.

Now, once the nature and purpose of the law has been defined, its order is presented below, which is made up of 111 articles and 8 titles, whose scaffolding is as follows (table 1):

² Se refiere a la cuenta pública federal mencionada en el artículo 74, fracción VI, de la Constitución Política de los Estados Unidos Mexicanos, y cuyo contenido se establece en el artículo 53 de la Ley General de Contabilidad Gubernamental.

Tabla 1. Ordenamiento de la Ley de Fiscalización y Rendición de Cuentas de la Federación

Ley de Fiscalización y Rendición de Cuentas de la Federación		
Título	Contenido	Artículos
Primero	Disposiciones generales	1 al 12
Segundo	De la fiscalización de la cuenta pública	13 al 46
Tercero	De la fiscalización de recursos federales administrados o ejercidos por órdenes de gobierno locales y por particulares, así como de las participaciones federales	47 al 58
Cuarto	De la fiscalización durante el ejercicio fiscal en curso o de ejercicios anteriores	59 al 66
Quinto	De la determinación de daños y perjuicios y del finamiento de responsabilidades	67 al 79
Sexto	De las funciones de la Cámara de Diputados en la fiscalización de la cuenta pública	80 al 82
Séptimo	Organización de la Auditoría Superior de la Federación	83 al 109
Octavo	De la contraloría social	110 al 111

Fuente: Elaboración propia

Given the above, and using empirical logic, an analysis of the main implications of each of the eight titles that constitute the aforementioned law is presented below.

General disposition

The first title refers to the general provisions of said law, which are related to the following: a) supervision of operations with federal public resources or federal participations, b) auditing of the public account, c) supplementarity and d) fines and sanctions Next, each one is explained.

a. Inspection of operations with federal public resources or federal participations

The ASF may supervise operations that involve federal public resources or federal participations through hiring, subsidies, transfers, donations, trusts, funds, mandates, public-private partnerships or any other legal entity and the granting of guarantees on State and local loans. Municipalities, among other operations (see art.1).

b. Audit of the public account

The audit of the public account must include the following aspects:

- I. The audit of the financial management of the audited entities to verify compliance with the provisions of the revenue law and the budget of expenditures and other applicable legal provisions, in terms of public income and expenditure, as well as public debt, including the review of the management, custody and application of federal public resources, as well as the other financial, accounting, patrimonial, budgetary and programmatic information that the audited entities must include in said document, in accordance with the applicable provisions.
- II. The practice of performance audits to verify the degree of compliance with the objectives of the federal programs (see article 2).

It should be noted that the audit of the public account will be conducted in accordance with the principles of legality, finality, impartiality and reliability. In addition, the audit of the public account must be carried out after the end of each fiscal year, once the annual audit program is approved and published on its website. It has an external nature and, therefore, is carried out independently and autonomously of any other form of control or inspection carried out by the internal control bodies³. In other words, the audit of the public account for fiscal year 2017 will be carried out in 2018 (see articles 3 and 6).

³ Son órganos internos de control las unidades administrativas a cargo de promover, evaluar y fortalecer el buen funcionamiento del control interno en los entes públicos, así como de la investigación, substanciación y, en su caso, de sancionar las faltas administrativas que le competan en los términos previstos en la Ley General de Responsabilidades Administrativas.



c. Supplementation

When the Law on Fiscalization and Accountability of the Federation lacks express disposition, the Federal Law of Budget and Fiscal Responsibility, the General Law of Government Accounting, the Law of Financial Discipline of the Federative Entities and the Municipalities will be applied in a supplementary manner. , the Fiscal Coordination Law, the Income Law, the Fiscal Code of the Federation, the Federal Law of Administrative Procedure, the General Law of Administrative Responsibilities, the General Law of the National Anticorruption System, and the Budget of Expenses, as well as the relative provisions of federal, substantive and procedural common law, in that order (see article 7).

d. Fines and penalties

The ASF may impose fines when the public servants, as well as any entity, individual or moral, public or private, trust, mandate or fund, or any other legal entity, who receive or exercise federal public resources or federal participations, do not comply with the requests for information and documentation for the purposes of audits and investigations (see articles 9 and 10).

On the other hand, on the sanctions, in case of incurring in refusal to deliver information to the ASF, as well as the simulation of acts that seek to hinder and obstruct the inspection activity, it will be sanctioned according to the General Law of Administrative Responsibilities, as well as the applicable criminal laws. When false information is provided, they will be penalized (see article 11).

Audit of the public account

The second title refers to the auditing of the public account, for which the following is established: a) term and purpose of the public account inspection, b) content of the general report⁴ and its analysis, c) individual reports, d) actions and recommendations derived from the audit and e) conclusion of the review of the public account. Next, each one is explained.

⁴ Informe General Ejecutivo del Resultado de la Fiscalización Superior de la Cuenta Pública.



a. *Term and object of the audit of the public account*

The public account will be presented within the term established in article 74, section VI, third paragraph, of the Political Constitution of the United Mexican States (CPEUM) and as established for that purpose in the General Law of Government Accounting (see art. 13). Pursuant to the CPEUM, the public account of the fiscal year must be presented to the Chamber of Deputies within a period no longer than April 30 of the following year, with an extension that does not exceed 30 calendar days. The aforementioned constitutional provision is as follows:

Article 74. Exclusive faculties of the Chamber of Deputies are:

SAW. Third paragraph. The Public Account of the corresponding fiscal year must be presented to the Chamber of Deputies no later than April 30 of the following year. The term of presentation can only be extended in the terms of section IV, last paragraph, of this article; the extension must not exceed 30 calendar days and, in such case, the Superior Audit of the Federation will have the same additional time for the presentation of the General Executive Report of the result of the Superior Control of the Public Account.

In relation to the purpose of auditing the public account, it consists of the following:

- I. Evaluate the results of financial management.
- II. Verify compliance with the objectives contained in the programs.
- III. Promote the corresponding actions or denunciations for the imposition of administrative and criminal sanctions for the serious faults that may be noticed as a result of their audits and investigations, as well as giving a hearing to the competent authorities when the commission of non-serious administrative offenses is detected so that they continue the respective investigation and promote the imposition of appropriate sanctions.
- IV. The others that are part of the auditing of the public account or the review of the fulfillment of the objectives of the federal programs (see article 14).

It should also be noted that the observations that, if any, the ASF issues may result in the following:

- I. Actions and forecasts, including requests for clarification, statements of observations, reports of alleged administrative responsibility, promotions of the exercise of the power of fiscal verification, promotions of sanctioning administrative responsibility, denunciations of facts before the Specialized Prosecutor's Office in Matters of Combat to the Corruption and accusations of impeachment.
- II. Recommendations (see article 15).

b. Content of the general report and its analysis

The ASF will have a term that expires on February 20 of the year following the presentation of the public account to render the general report, that is, corresponding to the Chamber of Deputies of the Congress of the Union, through the Supervisory Commission. of the Superior Audit of the Federation of the Chamber of Deputies, which shall have a public nature (see article 33). A consequence of the 2016 reform was applied in the delivery of the reports, since the terms were subject as they were before the reform of the LFRCF, as an example, the delivery of the General Report and the Public Account of 2015, which It was held on February 15, 2017. (See Figure 1)

Figura 1. Nota. Auditoría Superior de la Federación, Informe General Cuenta pública 2015





Finally, the general public account report must contain:

- I. A summary of the audits carried out and the observations made.
- II. The key areas with risk identified in the audit.
- III. A summary of the results of the federalized spending audit, federal participations and the evaluation of the fiscalizable debt.
- IV. The description of the audited public expenditure sample, indicating the proportion with respect to the exercise of the powers of the Union, the Federal Public Administration, the federalized expenditure and that exercised by autonomous constitutional bodies.
- V. Derived from the audits, where appropriate, and depending on the relevance of the observations, a section that includes suggestions to the Chamber to modify legal provisions in order to improve the financial management and the performance of the audited entities.
- VI. A section that contains an analysis of the projections of public finances contained in the General Economic Policy Criteria for the corresponding fiscal year and the data observed at the end of it.
- VII. Other information considered necessary (see article 34).

c. Individual reports

The individual reports that conclude during the respective period must be delivered to the Chamber, through the Commission, on the last business day of the months of June and October, as well as on February 20 of the year following the presentation of the account. public; these reports must contain, among other things, the following: the selection criteria, the objective, the scope, the audit procedures applied and the opinion of the review; the names of the public servants of the ASF in charge of carrying out the audit or, as the case may be, of the offices or independent professionals hired to carry it out.

In addition, compliance, as the case may be, with the Income Law, the Expenditure Budget, the Federal Public Debt Law, the Fiscal Coordination Law, the General Government Accounting Law and other legal provisions, and the results of the inspection carried out. It should be noted that the reports will be public and will remain on the ASF website, in open



formats in accordance with the General Law on Transparency and Access to Public Information (see articles 35 and 36).

The ASF will report to the Chamber on the individual reports of the observations, recommendations and actions, as well as, where appropriate, the imposition of the respective fines and other actions that derive from the results of the audits carried out (see Article 37).

d. Actions and recommendations derived from the audit

The ASF will send to the audited entities, within a period of 10 business days following the delivery to the Chamber, the individual report that contains the actions and recommendations that correspond to them so that, within a period of 30 working days, present the information and make the pertinent considerations. With the notification of the individual report to the audited entities, the actions and recommendations contained in said report will be formally promoted and notified (see Article 39).

The ASF, when promoting or issuing the actions referred to by law, will observe what is shown in the following tables:

Tabla 1. Acciones derivadas del proceso de fiscalización
Acciones que emite directamente la ASF

Tipo de acción	Criterios para concluir con la acción	Plazos legales involucrados hasta la conclusión de la acción			Consecuencia en caso de no concluirse con la acción
		Plazo de notificación por parte de la ASF	Plazo de respuesta del ente auditado	Plazo para que la ASF se pronuncie	
<p>Recomendación (Preventivo)</p> <p>Sugerencia para fortalecer los procesos administrativos y los sistemas de control.</p>	Respuesta de la entidad fiscalizada.	10 días hábiles a partir de la entrega del informe individual correspondiente a la Cámara de Diputados.	30 días hábiles, a partir de la recepción de la recomendación.	120 días hábiles a partir de recepción de respuesta.	La ASF enviará a la Cámara de Diputados un reporte final detallando la información, documentación o consideraciones aportadas por las entidades fiscalizadas.
<p>Solicitud de aclaración (Preventivo)</p> <p>La ASF requerirá a las entidades fiscalizadas que presenten información adicional para atender las observaciones que se hayan realizado.</p>	Respuesta y documentación suficiente y competente.	10 días hábiles a partir de la entrega del informe individual correspondiente a la Cámara de Diputados.	30 días hábiles, a partir de la recepción de la recomendación.	120 días hábiles a partir de recepción de respuesta.	Formulación de Pliego de Observaciones.
<p>Pliego de observaciones (Correctivo)</p>	Argumentos y documentación suficiente o con el reintegro correspondiente.	10 días hábiles a partir de la entrega del informe individual correspondiente.	30 días hábiles, a partir de la recepción de la	120 días hábiles a partir de la recepción de la	Se inicia el procedimiento para el fincamiento de responsabilidad resarcitoria a



<p>La ASF determinará en cantidad líquida los daños o perjuicios, o ambos a la Hacienda Pública Federal o, en su caso, al patrimonio de los entes públicos.</p>		<p>e a la Cámara de Diputados.</p>	<p>recomendación</p>	<p>respuesta</p>	<p>servidores públicos o particulares. El pliego definitivo de responsabilidades determina indemnización correspondiente por daños o perjuicios, estimables en dinero. La indemnización correspondiente se constituye en un crédito fiscal, cuyo cobro efectúa la autoridad competente mediante procedimiento administrativo de ejecución.</p>
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Fuente: Recuperado de [Web] Auditoría Superior de la Federación (2018) Acerca de la ASF, ¿Qué hacemos y cómo lo hacemos?, Acciones derivadas del proceso de fiscalización.

Tabla 2. Acciones derivadas del proceso de fiscalización
Acciones que promueve la ASF ante otras instancias.

Acción	Descripción	Rol de la ASF
Promoción del Ejercicio de la Facultad de Comprobación Fiscal (Correctivo)	La ASF informará a la autoridad competente sobre un posible incumplimiento de carácter fiscal detectado en el ejercicio de sus facultades de fiscalización.	Promovente ante el Servicio de Administración tributaria.
Promoción de Responsabilidad Administrativa Sancionatoria (Correctivo)	La ASF promueve, ante las instancias internas de control competentes, las presuntas acciones u omisiones que pudieran implicar una responsabilidad administrativa	Promovente ante los Órganos Internos de Control, las contralorías estatales, la Secretaría de la Función Pública, etc.
Denuncia de Hechos (Correctivo)	Las denuncias penales de hechos presuntamente ilícitos, deberán presentarse cuando se cuente con los elementos que establezca la Ley	Denunciante y coadyuvante del Ministerio Público.

Fuente: Recuperado de [Web] Auditoría Superior de la Federación (2018) Acerca de la ASF, ¿Qué hacemos y cómo lo hacemos?, Acciones derivadas del proceso de fiscalización.

In relation to the recommendations, before being issued, the ASF will analyze with the audited entities the observations that give reasons for them. In the preliminary and final results meetings, the entities audited through their representatives or liaisons will sign jointly with the personnel of the corresponding audit areas of the ASF, the minutes that set out the terms of the recommendations that, where appropriate, are agreed and the mechanisms for their attention. The foregoing notwithstanding that the ASF may issue recommendations in cases where it does not reach agreements with the audited entities (see Article 42).

It should be noted that if the ASF does not decide on the answers issued by the audited entities, within a period of 120 calendar days, counted from its reception, the actions and recommendations will be considered as attended (see Article 41).



e. Conclusion of the public account review

The Commission will carry out an analysis of the individual reports, of the specific reports ⁵ and of the general report, and will send it to the Budget and Public Account Commission of the Chamber of Deputies; may request from the ordinary committees of the Chamber an opinion on aspects or specific contents of said reports. In the corresponding analysis, the Committee may incorporate any suggestions it deems appropriate and that the ASF has made to modify legal provisions that aim to improve the financial management and the performance of the audited entities (see Article 44).

The Budget Commission will study the general report. Likewise, the corresponding opinion shall be submitted to the vote of the Plenary, no later than October 31 of the year following the presentation of the public account. The opinion must have a detailed analysis of its content and be supported by technical conclusions of the general report and by recovering the technical discussions held in the Commission, for which it will accompany its opinion, in a background section, the analysis carried out by the Commission (see article 46).

Finally, the approval of the opinion does not suspend the processing of the actions promoted by the ASF, which will follow the procedure foreseen (see Article 46).

Supervision of federal resources administered or exercised by local government orders and by individuals, as well as federal participations

The third title of the aforementioned law refers to the control of federal resources administered or exercised by orders of local governments and by individuals, as well as federal participations, where the following is established: a) inspection of federalized expenditure, b) fiscalization of federal participations, c) superior control of public debt of federal entities and municipalities that have federal government guarantee and d) supervision of compliance with the Financial Discipline Law of the Federal Entities and Municipalities.

⁵ Es el informe derivado de denuncias a que se refiere el último párrafo de la fracción I del artículo 79 de la Constitución Política de los Estados Unidos Mexicanos.



a. Fiscalization of federalized spending

The ASF will directly supervise the federal resources administered or exercised by the federal entities, the Municipalities and the City Halls of Mexico City, as well as those destined and exercised by any entity, individual or moral, public or private, and transferred to trusts, mandates, funds or any other legal entity, without prejudice to the competence of other authorities and the rights of users of the financial system. When the result of the audit is credited to the Federal Public Treasury or the estate, the ASF will proceed to formulate the corresponding list of observations (see articles 47 and 49).

Also, in cases where it is appropriate, in terms of the fifth title of the law, the administrative unit in charge of the investigations of the ASF will promote the report of alleged administrative responsibility for the imposition of the corresponding sanctions (see Article 49).

b. Supervision of federal participations

The ASF will directly supervise the federal participations reviewing the processes carried out by the Federal Government, the federal entities, the Municipalities and the City Halls of Mexico City, and will include the following:

- I. The application of the distribution formulas for federal participations.
- II. The opportunity in the administration of resources.
- III. The exercise of the resources in accordance with the applicable local provisions, and the financing and other obligations and financial instruments guaranteed with federal participations.
- IV. Where appropriate, compliance with the objectives of the programs financed with these resources, in accordance with the provisions of the local budgets.
- V. The federal entities' debt guaranteed with federal participations (see article 50).

In that order of ideas, the ASF will be able to carry out the audits on the federal participations through the coordination mechanisms that it implements; for the purposes of the foregoing, it will issue the technical guidelines that should be contained in the



corresponding collaboration mechanisms and that will aim to standardize and make efficient and effective the control of the participations exercised by the federal entities, the Municipalities and the City Halls of the City from Mexico. This is without prejudice to the fact that the ASF may directly carry out the audit of federal participations regardless of the coordination mechanism that has been executed or implemented (see Article 51).

c. Superior control of the public debt of the federal entities and municipalities that have federal government guarantee

The ASF, with respect to the guarantees granted by the Federal Government on the financing and other obligations contracted by the States and Municipalities, shall supervise:

- I. The guarantees that, in its case, the Federal Government grants.
- II. The destination and exercise of the resources corresponding to the public debt contracted by said state and municipal governments (see article 52).

The auditing of all public credit instruments and financing and other obligations contracted by the states and municipalities that have the guarantee of the Federation will be carried out to verify if these areas of government:

- I. They were formalized in accordance with the general bases established by the Financial Discipline Law of the Federative Entities and the Municipalities.
- II. They were formalized according to the bases established by the legislatures of the entities in the corresponding law (see Article 53).

As for the control of the guarantees granted by the federal government, the ASF will review that the legal mechanism used as a source of payment of the obligations does not generate administrative expenses higher than the average costs in the market; likewise, that the contracting of the loans is made under the best market conditions, as well as that the resources have been destined to a productive public investment, a restructuring or a refinancing (see Article 54).

Now, the financing or loans contracted with the Federation's guarantee will be those that, according to the Financial Discipline Law of the Federative Entities and the Municipalities, have that character (see Article 56).



d. Supervision of compliance with the financial discipline law of the states and municipalities

The ASF, in relation to the budgetary and exercise rules, the contracting of public debt and the obligations set forth in the Financial Discipline Law of the Federative Entities and the Municipalities, shall supervise:

- I. The observance of financial discipline rules, in accordance with the terms established in the Financial Discipline Law of the Federal Entities and Municipalities.
- II. The contracting of financing and other obligations in accordance with the provisions set forth in the Financial Discipline Law of the Federal Entities and the Municipalities and within the limits established by the alert system of said law.
- III. The fulfillment of registering and publishing all of its financings and other obligations in the single public registry established in the Financial Discipline Law of the Federative Entities and the Municipalities (see article 58).

Inspection during the current fiscal year or previous fiscal years

The fourth title instructs on the control during the fiscal year in course or of previous exercises, for which it establishes the following: a) denunciations, b) elements of the writing of denunciation, c) origin of the denunciation and d) authorization of the revision of the corresponding financial management (current or previous fiscal year).

a. Complaints

Any person may file a well-founded complaint when the management, application or illegal custody of federal public resources or of their deviation is presumed, in the cases provided for by law. The ASF may review the financial management of the entities audited during the current fiscal year, as well as for fiscal years other than the public account under review.

Complaints may be submitted to the Chamber, the Commission or directly to the Superior Audit Office of the Federation (see article 58). The denunciations must be based on



documents and evidences by means of which the management, application or irregular custody of public resources or of their deviation is presumed, in the cases established in the law. It should be noted that the ASF must protect the identity of the complainant (see Article 60).

b. Elements of the complaint

The letter of complaint must have, at least, the following elements:

- I. The year in which the alleged irregular facts are presented
- II. Description of the alleged irregular facts. Likewise, the writ of denunciation must be accompanied by the elements of evidence, whenever possible, that are directly related to the facts denounced (see Article 60).

c. Origin of the complaint

The complaint proceeds in one of the following cases:

- I. Diversion of resources for purposes other than those authorized.
- II. Irregularities in the collection or management and use of public resources.
- III. Allegedly irregular acts in the contracting and execution of works, contracting and rendering of public services, acquisition of goods, and granting of permits, licenses and concessions, among others.
- IV. The recurring commission of irregularities in the exercise of public resources.
- V. Inconsistency in the financial or programmatic information of any audited entity that conceals or may cause damage or prejudice to its patrimony. The ASF will inform the complainant of the decision it takes on the appropriateness of initiating the corresponding review (see Article 61).

d. Authorization of the review of the corresponding financial management (current or previous fiscal year)

The holder of the ASF will authorize the review of the corresponding financial management, either of the fiscal year in progress or of previous years to the public account under review, as well as of the revision made to the current fiscal year or to the previous



fiscal years. The ASF will submit a report to the Chamber no later than 10 business days after the conclusion of the audit. Likewise, it will promote the corresponding actions for the establishment of the administrative, criminal and political responsibilities that may take place, in accordance with the provisions of this law and other applicable legislation (see Articles 62 and 65).

Determination of damages and the establishment of responsibilities

The fifth title responds to the determination of damages, and the establishment of responsibilities, for which the following is established: a) determination of damages against the Federal Public Treasury or the assets of public entities, b) recourse of reconsideration and c) prescription of responsibilities.

a. Determination of damages against the Federal Treasury or the assets of public entities

If the audit will detect irregularities that allow presuming the existence of responsibilities by public or private servants, the ASF will proceed as follows:

- I. To promote before the court the imposition of sanctions on public servants for the serious administrative faults detected during their audits and investigations, in which public servants incur, as well as sanctions against individuals linked to said faults.
- II. Give a view to the competent internal control bodies when it detects possible administrative responsibilities different from those mentioned in the previous section.
- III. Present the complaints and criminal complaints, which correspond to the specialized prosecutor's office, for the probable crimes that are detected as a result of their audits.
- IV. Help the specialized prosecutor's office in the corresponding criminal proceedings, both in the investigative and judicial stages.
- V. Present the accusations of impeachment before the Chamber that, where applicable, correspond in terms of the applicable provisions (see Article 67).



b. Reconsideration resource

The processing of the appeal for reconsideration, against the fines imposed by the ASF, will be subject to the following provisions:

- I. It will be initiated by means of a document that must be submitted within a period of 15 days from the date on which the notification of the fine takes effect, which will contain the following: the mention of the administrative authority that imposed the fine, the name and autograph signature of the appellant, the address that indicates to hear and receive notifications, the fine that is appealed and the date on which it was notified. The grievances that in the opinion of the audited entity and, where appropriate, of the public servants, or of the individual, natural or legal person, cause the impugned sanction; likewise, a copy of this and the corresponding notification of proof shall be attached, as well as any documentary evidence or any other type of supervening evidence that may be offered that is immediately and directly related to the sanction appealed.
- II. When one of the requirements established in this article is not met for the submission of the appeal for reconsideration, the ASF will prevent the nonconformer for a single time so that, within a period of five calendar days, he will correct the irregularity in which he has incurred in his presentation.
- III. The ASF, when agreeing on the admission of the documentary and supervening evidence offered, will reject outright those that were not offered according to law and those that are contrary to morals or law.
- IV. Once the evidence has been presented, if any, the ASF will examine each and every one of the grievances asserted by the appellant and issue a ruling within 60 calendar days following the declaration of the instruction closed, notifying the appellant within the the twenty calendar days following its issuance.

It is important to note that the appellant may expressly withdraw from the appeal before the respective resolution is issued; in this case, the ASF will dismiss it without further processing. In addition, the resolution that ends the appeal will have the effect of confirming, modifying or repealing the contested fine (see arts. 75 y 76).



c. Prescription of responsibilities

The action to establish responsibilities and impose sanctions for serious administrative offenses will prescribe in seven years. The limitation period shall be counted from the day following that in which the responsibility was incurred or from the moment when it had ceased, if it was continuous.

In all cases, the prescription to which this provision refers will be interrupted in the terms established in the General Law of Administrative Responsibilities (see Article 78). In order to have full knowledge of when the prescription is interrupted, articles 74 and 100, first paragraph, and 113 of the General Law of Administrative Responsibilities must be observed. These precepts are of the following tenor:

Article 74. In the case of non-serious administrative offenses, the powers of the Secretariats or of the internal control bodies to impose the sanctions shall prescribe in three years, counted from the day after the infractions were committed, or from the when they have ceased.

In the case of serious administrative offenses or absences of individuals, the limitation period shall be seven years, counted in the same terms as in the previous paragraph.

The prescription will be interrupted with the classification referred to in the first paragraph of article 100 of this Law.

Article 100. First paragraph. Once the investigative measures have been completed, the investigating authorities will proceed with the analysis of the facts, as well as the information gathered, in order to determine the existence or non-existence of acts or omissions that the law indicates as an administrative fault and, if appropriate, to qualify it as serious or not serious.

Article 113. The admission of the Report of Alleged Administrative Responsibility will interrupt the limitation periods indicated in article 74 of this Law and will determine the matter of the administrative liability procedure.



On the other hand, responsibilities other than those mentioned in article 78 of the law, resulting from acts or omissions, shall be prescribed in the manner and time established by the applicable laws (see article 79).

Functions of the Chamber of Deputies in auditing the public account

The sixth title determines the functions of the Chamber of Deputies in the control of the public account, for which it is established: a) the Commission and b) powers of the Commission.

a. The Commission

The Chamber will have the Commission, which will have the powers to coordinate relations between the ASF and the ASF, evaluate the performance of the latter, constitute the link that will guarantee the proper coordination between both bodies and request that it be informed about the evolution of its inspection work (see art. 80).

b. Powers of the Commission

The powers of the Commission are broad, which is why the most relevant ones are presented:

- Be the channel of communication between the Chamber and the ASF.
- Receive the public account from the Board of Directors of the Chamber or the Permanent Commission of the Congress of the Union and turn it over to the ASF.
- Present to the Budget Committee the individual reports, the specific reports and the general report, as well as their respective analyzes and conclusions, taking into account the opinions that the ordinary committees of the Chamber make in their case.
- Analyze the annual program of control of the public account and know the strategic and annual programs of activities that the ASF, as well as its modifications and to evaluate its fulfillment, for the due fulfillment of its functions and attributions. With respect to the procedures, scopes, methods, guidelines and resolutions of audit procedures, may comment when these programs omit relevant areas of the public account.



- Cite, through its board of directors, the holder of the ASF to know specifically the individual reports and the general report.
- Evaluate the performance of the ASF in relation to the fulfillment of its mandate, attributions and execution of the audits; provide what is necessary to guarantee its technical and management autonomy and require reports on the progress of audit work.
- Present to the Chamber the proposal of the candidates to occupy the position of head of the ASF, as well as the request for its removal in terms of the provisions of the sixth paragraph of Article 79 of the Constitution, for which it may consult civil organizations and associations that it deems pertinent.
- Order the Unit to perform audits of the ASF.
- Invite organized civil society to participate as observers or social witnesses in the ordinary sessions of the Commission, as well as in conducting social control exercises in which the population is articulated with the audited entities (see Article 81).

Organization of the Superior Audit of the Federation

The seventh title refers to the organization of the Superior Audit of the Federation, for which it establishes the following: a) integration and organization, and b) surveillance of the Superior Audit of the Federation.

a. Integration and organization

At the head of the ASF there will be a designated head in accordance with the provisions of the sixth paragraph of article 79 of the Political Constitution of the United Mexican States, by the vote of two thirds of the members present of the Chamber (see Article 83).). The designation of the holder of the ASF will be subject to the following procedure:

- I. The Commission will formulate the corresponding public call, in order to receive, during a period of 10 calendar days counted from the date of publication of the call, applications to occupy the position of holder of the ASF. The Commission may consult the civil society and academic organizations it deems pertinent to nominate suitable candidates for the position.



- II. Once the previous term has ended, and the applications with the requisites and documents indicated in the call have been received, the Commission, within the following five calendar days, will proceed to review and analyze them.
- III. From the analysis of the requests, the members of the Commission will interview separately for the respective evaluation and within the five calendar days following the candidates that, in their opinion, they consider suitable for the formation of a shortlist.
- IV. Once the three days have elapsed, within three calendar days, the Commission will formulate its opinion, in order to propose to the Plenary the three candidates to proceed, under the terms of the previous article, to the appointment of the owner of the ASF.
- V. The person appointed to the position will protest before the House Plenary (see art. 84).

The holder of the ASF will remain in the assignment for eight years and may be reappointed once only. Likewise, it may be removed by the Chamber for the serious causes referred to in the law, Article 93, with the same voting required for its appointment, as well as for the causes and in accordance with the procedures provided for in Title 4 of the Political Constitution of the United Mexican States (see article 86).

The requirements to be the holder of the ASF, as well as its attributions, are respectively established in articles 88 and 89. In addition, the holder of the ASF will be assisted in his functions by the special auditors, as well as by the owners of units, Directors-General, auditors and other public servants appointed for this purpose by the Internal Regulations of the Superior Audit of the Federation, in accordance with the authorized budget (see Article 90).

b. Surveillance of the Superior Audit of the Federation

For the purpose of supporting the Commission in the fulfillment of its powers, there will be the Commission's Evaluation and Control Unit, in charge of monitoring the strict compliance of the functions carried out by the public servants of the ASF, which will be part



of the structure of the Commission. The Unit may impose the non-serious administrative sanctions provided for in the General Law of Administrative Responsibilities or, in the case of serious faults in terms of said law, promote the imposition of sanctions before the court (see Articles 102 and 103).

The head of the Unit will be appointed by the Chamber, through the majority vote of its members present at the respective session, at the proposal of the Commission, which will present a list of candidates that must meet the requirements established by this law for the holder of the ASF. The above will be carried out through the procedures and deadlines set by the same Commission. The incumbent will hold office for four years, which he may again perform for another equal term (see Article 105). The attributions of the Unit and the holder thereof are respectively in articles 104 and 107.

Social Comptroller's Office

The eighth title refers to the social comptroller, and establishes the following: a) Citizen Participation Committee and b) ways to present opinions, requests and complaints

a. Citizen Participation Committee

The Commission will receive petitions, proposals, requests and complaints based on and motivated by civil society, which may be considered by the ASF. Said proposals may also be presented through the Citizen Participation Committee referred to in the General Law of the National Anticorruption System (see Article 110). For its part, and in accordance with article 21, section XII, of the General Law of the National Anticorruption System, the Citizen Participation Committee shall have the following powers within its powers:

Article 21. The Committee of Citizen Participation will have the following attributions:

(...) XII. Propose rules and procedures through which the petitions, requests and well-founded and motivated complaints that civil society intends to send to the Superior Audit Office of the Federation, as well as to the local superior control entities, will be received.



b. Ways to present opinions, requests and complaints

The Unit will receive from the society opinions, requests and complaints about the operation of the audit carried out by the ASF to participate, contribute and contribute to improve the functioning of its audit functions. These opinions, requests or complaints may be submitted by electronic means or in free writing addressed to the Unit, which will make the corresponding formats available to individuals (see art.. 110).

Results and Discussion

In order to understand the scope and purpose of the Law on Fiscalization and Accountability of the Federation, the following contributions and powers must be taken into account: the audit of the public account will cover the financial management of the audited entities, the public debt , the custody management review and the application of federal public resources. Likewise, the direct supervision by the Superior Audit Office of the Federation of operations involving federal public resources through hiring, subsidies, transfers, trusts, donations, mandates, public-private partnerships or any other legal entity. Likewise, the direct auditing of the federalized expenditure, both the federal contributions labeled in branch 33 of the Federal Expenditure Budget and the federal participations referred to in the branch 28.

In the latter case, it is expected that the Audit may carry out the necessary measures through coordination mechanisms with the local oversight bodies. The power of said audit to investigate, substantiate and promote before the Federal Court of Administrative Justice the imposition of sanctions for the commission of serious administrative offenses, especially those that derive from the public treasury, is also provided.

On the other hand, the Audit Office may file complaints and criminal complaints, cooperate with the Specialized Prosecutor's Office in Combatting Corruption, and submit complaints of impeachment before the Chamber of Deputies. One of the precepts states that a general executive report will be made on the overall results and the main statistics derived from the auditing function of the Audit, which will allow the Chamber of Deputies to have a general and concentrated perspective of the functions of said technical body. , as well as detailed information through the individual, semi-annual and specific reports that are given



to know. In this sense, the public account must be presented no later than April 30 of the following year to the corresponding one and its revision must conclude before October 31st.

Likewise, the ASF shall supervise the guarantees granted by the Federal Government in relation to the financing and loans contracted by the states and Municipalities; in addition, to ensure that the derived resources are destined to productive public investments and to their refinancing or restructuring under the best market conditions. It may also audit previous exercises to the public account under review, and even to the one in progress, provided that, in the latter case, they are derived from complaints that presume the diversion of federal public resources or any irregularity in its management, application or custody, for which authorization must be received from the holder of the Audit. For this reason, the fiscal coordination and government accounting laws are reformed to promote the cooperation of the local entities of superior control with the audit in the control of the federal participations.

As can be seen, with the new powers established in this law, the ASF will be one of the most determining organs within the Anticorruption System, since it must not only take care that each peso of the public budget is used for the purposes contemplated in the laws, but that others may bring before the courts those officials who misuse those resources. If these tasks are carried out efficiently and promptly, the ASF will be able to contribute to the urgent reconstruction of the citizens' trust in their institutions and in the use they make of the money of all Mexicans.

Conclusion

In conclusion it is worth highlighting the statement made in the Senate during the discussion of this law ⁶, where it was explained that in corrupt governments there are more possibilities not only to comment on this crime, but also to act with impunity due to the greater number of accomplices that can be counted on.

⁶ Dictamen emitido por las Comisiones Unidas Anticorrupción y Participación Ciudadana, de Justicia y de Estudios Legislativos, segunda, del Senado de la República sobre la Minuta que contiene el Proyecto de Decreto por el que se expide la Ley de Fiscalización y Rendición de Cuentas de la Federación, y se reforman el artículo 49 de la Ley de Coordinación Fiscal y el artículo 70 de la Ley de Contabilidad Gubernamental. Dictamen publicado en la Gaceta del Senado LXIII-PPE-2/63641, el jueves 16 de junio de 2016.



This means that in a context such as the current one, in which there is an institutional weakness that stimulates the achievement of increasingly sophisticated illicit acts, the Law on Fiscalization and Accountability of the Federation comes to represent an indispensable legal instrument to strengthen the normative guidelines of public authorities and to try to reduce the phenomenon of corruption to its minimum expression. For this, however, citizen participation is also required, through attention to the different issues that are discussed in said institution.

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