

# FRAUD

A PUBLICATION

FOR FRAUD EXAMINERS

MAGAZINE®



## *louis freeh*

### Tempered ambition

He has balanced raising six children with a tenacious ambition that led him to become the director of the FBI and now the chair of his own company. All along the way, he's concentrated on some core values.

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# Mexico passes anti-money laundering law

## Combating drug gangs but also tackling fraud

*This new column will review anti-fraud legislation from around the globe. — ed.*

**M**exico, following Financial Action Task Force (FATF) and European Union directives on money laundering, issued its anti-money laundering law on Oct. 17, 2012, which came into full force on July 17, 2013. (The official name of the law is Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita.) The law applies to Mexican businesses and individuals and foreigners who operate subsidiaries, offices or branches in Mexico.

Mexican President Felipe Calderon proposed the law in 2010 as part of his offensive against drug gangs, but fraud examiners should know how it could also affect their cases.

“The purpose of this law is to protect the financial system and the national economy, establishing rules and procedures to prevent and detect transactions or operations that involve illegal proceeds,” the legislation states. (For an overview of the law in English, see <http://tinyurl.com/nf898c9>.)

### To whom does it apply?

The new law, which doesn't target specific industries or business lines, lists 15 vulnerable activities of individuals and/or companies, including gambling games, construction services

and auction or marketing of works of art, among others.

Depending on the size of their operations, the vulnerable activities are subject to compliance with the law, reporting monthly to the Secretaría de Hacienda y Crédito Público, (SHCP) — the Secretariat of Finance and Public Credit — and cash-handling restrictions.

See the summary table on page 12. Peso amounts in the table are established according to the prevailing minimum wage in Mexico City – MW, \$67.29 per day (US\$5.14), as of press time. (Mexico uses the dollar sign for its peso.) The exchange rate is \$13.08 in pesos to US\$1, as of press time.

Obviously, if the operations and/or transactions *don't* exceed the amounts shown, individuals and companies don't have to comply with the law. However, individuals and/or companies must present notices if they're involved in these activities for six months and if the amounts equal or exceed the pesos in the chart.

This implies that individuals and companies should monitor customer transactions within these vulnerable activities and establish alerts so they know when the cumulative sums approach the limits.



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### Specific compliance rules

For amounts that are equal to or greater than what the law indicates, individuals and companies engaged in the vulnerable activities must:

1. Identify and verify their customers. They must request official identification so their identities can be verified and make photocopies of the IDs for records and/or files.
2. Request the name of the true beneficial owner — who really owns the resources. Often companies perform vulnerable activities mentioned in the table, but they could be done through their representatives and not necessarily the owners.

3. Maintain documentation that supports customers and their operations and/or transactions for at least five years. This includes customer information that's on record (identification, customer profile, etc.) and the backup of operations and/or transactions that they perform (invoices, bills, notes, notices submitted to the authority, etc.) coming from the company.
4. Designate a representative to the SHCP. The person representing the company before the authority shall use its personal fiscal data, such as: RFC (Federal Taxpayers Registry) and FIEL (Advanced Electronic Signature) to register and then present the operations report or notices. Also, the representative must have at least power of attorney for a company's acts of administration. If a company doesn't update and carry these regulations, the board of directors will be responsible (or the sole director in the case of an individual).
5. Electronically submit notices on the 17<sup>th</sup> of month through the SHCP portal.
6. Develop a policy within 90 days of being registered in the SHCP portal that indicates how, who and when it should identify its clients based on their operations and amount of transactions specified by law.
7. Keep customer records for companies and individuals, updated yearly, containing their operations and transactions.

### Specifics on notices

The electronic notices must include:

- Information about the vulnerable activity, such as complete name or business name, address, nationality, telephone, email, date of birth

or incorporation, data partners and shareholders, etc.

- Information about the customer or user, such as complete name or business name, date of birth or incorporation, nationality, address, telephone, email, data from the document (such as a voter card or passport) that was used to identify, etc.
- General description of the vulnerable activities.

The SHCP gives the alternate option that companies and persons can submit their notices on vulnerable activities via "collegial bodies" — newly organized groups that can represent their interests. The law requires these grouped bodies consist of companies or persons that carry out similar tasks. In addition to the standard reporting

responsibilities, they also have to supply updated member registries, description of procedures and other data. Every collegial body must use its fiscal data to register and submit notices.

Of course, compliance with the law doesn't infer guilt. But if companies can't explain their methods then they can become targets for investigations. While the SHCP is in charge of administering the law, the Specialized Unit in Financial Analysis of the Attorney General's Office is in charge of accounting, financial analysis and investigations.

Penalties vary according to circumstances. The monetary fines ranging from 200 MW (equivalent to \$13,458 Mexican pesos) up to revocation or cancellation of licenses and permits or even jail sentences.

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**The law's promise and the reality**

Before the new law, many of Mexico's anti-money laundering cases could have potentially gone to court, but the government didn't prosecute because of increases in number and diversity of these cases, and it didn't receive enough information in financial sector reports sent to authorities, among other reasons. (See "Deficiencias estructurales impiden que se condene el lavado de dinero," by Israel Rodriguez, July 23, 2012, LaJornada, <http://tinyurl.com/qhvsp7e>.)

Mexico already had anti-money laundering mechanisms in 2004, but the FATF's 40 recommendations in 2008 gave an impetus to strengthen controls. (See "México no cumple con GAFI por vacío legal," by Leonor Flores,

Feb. 16, 2012, El Economista, <http://tinyurl.com/oa5fq4w>.)

In March 2012, the Chamber of Deputies (Mexico's lower house of the Congress of the Union) announced in a report that the nation in that year lost US\$10 billion from illegal activities. The SHCP report said that 41 percent of money laundering is related to illicit drugs, 33 percent for human trafficking and 20 percent for piracy.

**Preventative shield**

The new anti-money laundering law is comprehensive, but Mexico faces significant challenges. The authorities must take time to analyze how vulnerable activities operate and then regulate them without creating meaningless paperwork or missing potential money laundering alerts.

Companies and persons involved in the vulnerable activities must realize that the law is a preventative shield — not a nuisance — that will protect their bottom lines and images.

Both the regulators and those regulated must realize that they should make the law work for the development of the country and protection of its people — and other global citizens. Minimizing the risk of money laundering requires the commitment of all. ■ **FM**

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**Summary of Mexico's new anti-money laundering law**

No.	Vulnerable activity	A vulnerable activity if its transactions are equal to or greater than (in Mexican Pesos)	Must submit notices to SHCP when transactions are equal to or greater than (in Mexican pesos)	Restricts the use of cash (national, foreign exchange or precious metals) when transactions are equal to or greater than (in Mexican pesos)
1	Gambling games, contests or sweepstakes	325 MW \$21,869 US \$1,672	645 MW \$43,402 US \$3,318	3,210 MW \$216,000 US \$16,514
2	Services cards or credit (different than the financial institutions) includes pre-paid cards and any other instruments that constitute storage of monetary value. This definition includes stamps and coupons.	Services cards or credit: 805 MW \$54,168  US \$4,141 monthly expenses.  Pre-paid cards: 645 MW \$43,402  US \$3,318 by operation.  Others: according to the regulations of law.	Services cards or credit: 1,285 MW \$86,468  US \$6,611 monthly expenses.  Pre paid cards: 645 MW \$43,402  US \$3,318 by operation.	Doesn't indicate
3	Traveler's checks (different to the financial institutions)	Doesn't indicate	645 MW \$43,402 US \$3,318	Doesn't indicate
4	Operations by mutual, guarantee, credit or loan with or without guarantee, made by persons other than financial institutions	Doesn't indicate	1,605 MW \$108,000 US \$8,257	Doesn't indicate

5	Construction services, development of real estate, operations for the sale of goods for the account or on behalf of clients	Doesn't indicate	8,025 MW \$540,002 US \$41,285	8,025 MW \$540,002 US \$41,285
6	Marketing or brokering of metals or gemstones, jewelry or watches, including accessories made of precious metals, precious stones or pearls or any combination thereof (exception: Banco de México intervenes)	805 MW \$54,168 US \$4,141	1,605 MW \$108,000 US \$8,257	3,210 MW \$216,000 US \$16,514
7	Auction or marketing of works of art	2,410 MW \$162,169 US \$12,398	4,815 MW \$324,001 US \$24,771	3,210 MW \$216,000 US \$16,514
8	Marketing of new or pre-owned vehicles, by sea, air or land	3,210 MW \$216,000 US \$16,514	6,420 MW \$432,002 US \$33,028	3,210 MW \$216,000 US \$16,514
9	Shield services for new or used vehicles and real estate	2,410 MW \$162,169 US \$12,398	4,815 MW \$324,001 US \$24,771	3,210 MW \$216,000 US \$16,514
10	Relocation services or custody of money or securities (exception: Banco de México and institutions for deposit of securities). The amount of the operation is the value of money or securities transferred or held.	Doesn't indicate	3,210 MW \$216,000 US \$16,514	Doesn't indicate
11	Professional independent services that prepare/perform/or on behalf of the client: 1. Buying and selling real estate or assignment of rights, 2. Administration and management of resources or securities or any other asset 3. Management of bank accounts, savings or values 4. Organization of capital injections, constitution, operation and administration of mercantile companies 5. Constitution, split, merger, operation and administration of companies or corporate vehicles, includes trust and purchase and sale of commercial entities.	Doesn't indicate	When the independent professional carries out in his or her name and on behalf of a client and any financial transaction from those indicated in the first column	Doesn't indicate
12	Public faith: notaries and public corridors (includes public servants who have power to give public faith)	Depends on the operation	Depends on the operation	Depends on the operation
13	Receipt of donations by associations or non-profit corporation, including churches, religious groups, political parties, political groupings, professional associations, worker unions, etc.	1,605 MW \$108,000 US \$8,257	3,210 MW \$216,000 US \$16,514	Doesn't indicate
14	Foreign trade services as an agent or customs attorney	Depends on the operation	Always	Doesn't indicate
15	The constitution of the personal rights of use (to rent) or enjoyment of real estate. (The monthly value means the amount of income or price for the use or enjoyment of the property leased in a calendar month.)	1,605 MW \$108,000 US \$8,257	3,210 MW \$216,000 US \$16,514	3,210 MW \$216,000 US \$16,514