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by Mónica Ramírez Chimal

New Mexican federal law to curtail money laundering

- » The new Mexican anti-money laundering law is meant to disrupt the flow of cash for drug cartels.
- » High-value transactions must be reported if they are part of a “vulnerable activity.”
- » The identities of the people who benefit from the transactions must be verified and recorded.
- » Companies should appoint someone to oversee compliance with the law and deal with the IRS.
- » Companies or agents performing vulnerable activity should be preparing now to avoid sanctions when the law goes into effect.

In response to the massive money laundering operations of drug cartels (estimated to be as much as \$50 billion US dollars per year or 3% of all of Mexico’s legitimate business),¹ Mexico has passed a new anti-money laundering law. Although Mexico’s



Ramírez

Ministry of Finance published the Federal Law for the Prevention and Identification of Transactions from Illegal Funds (Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita, commonly known as the “Money Laundering Law”) on October 17, 2012, it will not become

effective until July 2013.² This could be thought of as a long period of time that the newly regulated companies would have to adjust their processes in order to comply with the law, but it is not. The new law indicates several aspects which the companies should be analyzing or working on right from this moment.

The new law establishes a new specialized prosecution unit to go after money launderers and lays out a number of new reporting requirements for major transactions. Casinos will have to report big money bets, and charity groups will have to inform the government of particularly generous donations.

Several cash transactions must be reported. For example, for cars, boats, and airplanes, the amount is \$415,760 pesos (about \$32,230 US), and for jewelry the amount is \$103,940 pesos (about \$8,057 US). Lottery ticket sales of \$41,770 pesos (about \$3,238 US) or more must also be reported. Entities in charge of credit and service cards, other than financial institutions, are required to report to the Ministry of Finance on a monthly basis, when a card user spends 1,285 times the minimum wage in Mexico City (about \$6,450 US) or more. A specially-designed financial analysis unit has been set up to work under the prosecutor in tandem with the Ministry of Finance.^{2,3}

Five important points

Under the law, certain businesses must report high-value transactions. The law uses the term “vulnerable activity” to refer to any company whose business line or activity may be vulnerable to money laundering.

Determine if the business is subject to the law

First, one must look at the nature of the business to determine if the company is subject to the new law because it engages in a vulnerable activity. The business line or main activity of the company defines whether it is subject to the

law or not. Then, the amounts of the transactions carried out determine whether or not it must report those transactions (see table 1).

The current minimum salary in Mexico City is indicated as the basis of the amounts that mark the limits, according to the law.

Unlike other countries, in Mexico the majority of the laws and regulations do not include a concrete number as a reference (e.g., 500 Mexican pesos).

Instead, the minimum salary is used as a basis. Minimum salaries are divided according to zones. Zone A includes Mexico City, Monterrey, Guadalajara, and some other popular areas; and for January 2013, the minimum salary has been authorized as \$64.76 Mexican pesos per day (about \$5 US). For Zone B, it is \$61.38 Mexican pesos.

(Note: Companies should recheck their controls if the current minimum salary changes, since the amount of transactions are defined on the basis of this salary and the controls may need to be adjusted. The exchange rate will affect the limits in US dollars.)

Limit the use of cash

Second, the law limits the use of cash (national and foreign exchange, as well as precious metals) in the vulnerable activities when the amounts of transactions are equal to or greater than the minimum salaries indicated. In other words, companies should not keep amounts higher than those legally allowed on the premises of their facilities. By law, the IRS authority can make surprise visits to companies in order to ensure compliance.

Designate a representative to the IRS authority

Third, although the law does not mention having a compliance officer, it is important

that companies define who will be the person responsible to oversee compliance with the law. In the absence of designating a company representative, the board of directors or sole administrator will be responsible. Individuals

who performed the vulnerable activities must personally and directly enforce the law.

The Financial Action Task Force (FATF),⁴ is an international group whose objectives are to set standards and promote

effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system. The FATF is therefore a “policy-making body” and it issued a series of 40 Recommendations that are recognised as the international standard for combating of money laundering. In its revision of the Recommendations issued in February 2012, it emphasized the difference between Internal Audit and Compliance, and encouraged the compliance officer to perform his work with a risk-based approach. This varies, due to different frameworks in different countries, so each company will have particular circumstances that must be assessed and handled.

Submit monthly notices

Fourth, those who have vulnerable activities to report must submit notices to the IRS authority no later than the 17th day of the following month, based on the amount of their transactions. Again, this amount will be defined according to the minimum salary. The law indicates that the notices should contain the:

- ▶ general data of the person who performs the vulnerable activity;

...the amounts of the transactions carried out determine whether or not it must report those transactions.

Table 1: Monetary amounts that trigger the obligation to report vulnerable activities

	Vulnerable activity	Covers transactions equal to or greater than (in Mexican pesos)	Must submit notices to IRS authority 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 SMVDF	645 SMVDF	3,210 SMVDF
2	Services cards or credit (different from the financial institutions), includes prepaid cards and any other instruments that constitute storage of monetary value	Services cards or credit: 805 SMVDF monthly expenses. Prepaid cards: 645 SMVDF by operation. Others: according to the Regulation of Law.	Services cards or credit: 1,285 SMVDF monthly expenses. Prepaid cards: 645 SMVDF by operation.	Does not indicate
3	Traveler's Checks (different from the financial institutions)	Does not indicate	645 SMVDF	Does not indicate
4	Operations by mutual, guarantee, credit, or loan with or without guarantee, made by persons other than financial institutions	Does not indicate	1,605 SMVDF	Does not indicate
5	Construction services, development of real estate, operations for the sale of goods for the account or on behalf of clients	Does not indicate	8,025 SMVDF	Does not indicate
6	Marketing or brokering of metals or gemstones, jewelry or watches Exception: Banco de México interferes	805 SMVDF	1,605 SMVDF	3,210 SMVDF
7	Auction or marketing of works of art	2,410 SMVDF	4,815 SMVDF	3,210 SMVDF
8	Marketing of new or pre-owned vehicles by sea, air, or land	3,210 SMVDF	6,420 SMVDF	3,210 SMVDF
9	Shield services for new or used vehicles and real estate	2,410 SMVDF	4,815 SMVDF	3,210 SMVDF
10	Relocation services or custody of money or securities (Exception: Banco de México and institutions for deposit of securities)	Does not indicate	3,210 SMVDF	Does not indicate
11	Professional independent services that prepare/perform/or on behalf of the client: a) buying and selling real estate or assignment of rights b) administration and management of resources or securities or any other asset c) management of bank accounts, savings or values d) organization of capital injections, constitution, operation, and administration of mercantile companies e) Constitution, split, merger, operation, and administration of companies or corporate vehicles, includes trust and purchase and sale of commercial entities.	Does not indicate	When independent professionals carry out, in name and on behalf of a client, any financial transaction other than those indicated	Does not 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	1,605 SMVDF	3,210 SMVDF	Does not indicate
14	Foreign trade services as an agent or customs attorney	Depends on the operation	Always	Does not indicate
15	The constitution of the personal rights of use or enjoyment of real state	1,605 SMVDF	3,210 SMVDF	Does not indicate

Notes: SMVDF = Current minimum salary for Mexican federal district zone A

The acts or operations that are performed for amounts lower than those listed above do not give rise to any obligation. However, if in a 6-month period a person engages in acts or operations that cumulatively exceed the amounts set out in each vulnerable activity, the operation may be subject to the obligation to submit a notice.

At the time this article was written, the currency exchange rate was 12.9 pesos for \$1 US.

- ▶ general data of the customer, user, or the beneficiary controller and the information about their activity or occupation; and
- ▶ general description of the vulnerable activity that requires the notice.

“Beneficiary controller” is defined by law as the person or group of persons who benefit from the service or product.

The notice of vulnerable activities must be filed in the official format that the IRS authority indicates. The law gives the option that each company or agent may present their notices through a collegiate institution. This entity should be integrated with those who perform similar activities or have the same business line. The collegiate institution will be obligated to maintain an updated register of its members, as well as the compliance of their obligations, as if it were a company.

Obligations under the law

Fifth, the company or person who performs the transaction must:

- ▶ Verify the customer and users’ identification, and keep photocopies of the documents presented. In the event the customers refuse to give their information, the business must refrain from providing the service or engaging in a commercial relationship.
- ▶ Ask the client or user who is the owner beneficiary.
- ▶ Retain the documentation at least 5 years, including invoices, or any document attesting to the operation and the form of payment.

Other points

The Regulations to the Money Laundering Law are expected to be published on August 18, 2013. The obligation to submit notices and to restrict cash shall apply 60 days following the

issuance of the Regulation (October 2013). The Regulations will establish simplified measures for complying with the obligations of the law, depending on the level of risk and those who performed the vulnerable activities. It will also consider alternative compliance options based on which vulnerable activities are obligated by other laws. Because the Mexican financial industry is already regulated, it is handled separately.

What happens if the companies fail to observe the law?

The sanctions vary according to the circumstances that are presented, ranging from \$12,952 Mexican pesos (equivalent to 200 current Mexico City minimum salaries as of January 2013), and revocation of permits and/or licenses to operate, or even prison.

A not-so-distant future

Even before the Regulation is issued in August, it is time for companies to deploy the controls and alerts that will help them detect covered activities, report them, and comply with the law. The deployment can be either manual or automatic, but should be tailored to the company’s business practices in the areas where it is vulnerable to the risk of money laundering. The law is already in place, and it is just a question of time before companies and agents are responsible for delivering the required notices to avoid potential sanctions. *

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3. Arya Anderson: “Looking at Mexico’s New Anti-Money Laundering Legislation.” Financial Task Force blog, October 16, 2012. Available at <http://www.financialtaskforce.org/2012/10/16/looking-at-mexicos-new-anti-money-laundering-legislation/>
4. Financial Action Task Force. For more information on the 40 Recommendations, see <http://www.fatf-gafi.org>