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The 2013 Compliance and Ethics Institute: Record attendance, deep insights

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by Mónica Ramírez Chimal

Regulations emerge for the new Mexican law to curtail money laundering

» Political parties, churches, and labor unions are among those expected to comply with the law.

» If money that is known to have illicit origin is used in an exchange, it must be reported within 24 hours.

» A requirement to develop a customer identification policy was added to the law.

» The only sector considered to be low-risk is the financial sector. Financial corporations, exchange centers, and money remitters must comply with the new guidelines set by the annual audit report.

» As of November 1, 2013, the amount of cash allowed to be used in an activity deemed vulnerable is restricted.

This article is a followup to an article that was published in the July/August 2013 issue of Compliance & Ethics Professional.

On July 18, 2013, the Federal Law for the Prevention and Identification of Operations with Illicit Resources (the Mexican Anti-Money Laundering Act) went into effect, issued by the Mexican Congress for the purpose of serving as an information hub in the government's fight against money laundering. On August 16, 2013, the Regulations to the Anti-Money Laundering Act were published; on August 23, 2013, the General Rules were published; and on August 30, 2013, the formats for registration and notification were published.[1]

Ramírez Chimal

Definitions

Churches, religious groups, political parties, political groups, professional associations, labor unions, and other similar groups were added to the definition of associations and nonprofit organizations. That is, all these entities are now obligated to follow the new law.

Items that carry monetary value, such as vouchers, stamps, or coupons, are included in the law's regulations. Any person or company is considered to be a customer or user, and as such are expected to perform business operations within the law's regulations for those activities deemed "vulnerable" to money laundering.

The amount of cash or precious metals (i.e., gold, silver, or platinum) permitted as a form of payment in a transaction is not to exceed a specific amount, whether it is paid in one or more installments.

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Registration of the designated representative

As part of the law, the IRS began registering designated company representatives on October 1, 2013. They released the information regarding the representative selection process on August 30, 2012.

To carry out the registration with the IRS, the designated representative for each company must use its own tax data, such as the Federal Taxpayers Registry (the Spanish acronym is RFC) and the Advanced Electronic Signature (the Spanish acronym is FEA). This also applies to collegiate institutions.

The selection process is as follows: The representative sends its data to the IRS so it can be checked. The IRS validates the information with the company and, once it is accepted, the appointment of the representative is complete. At this point the candidate can accept or reject their new position of authority.

This process is meant to prevent companies from appointing a representative who is not part of their personnel or who disagrees with the responsibility. In short, they check with both the company and the employee to ensure that all parties agree on the appointment.

About the notices

The company's representative is then tasked with submitting notices on the 17th of every month regarding the company's vulnerable activities, using their tax information. That is, companies and collegiate institutions will use their Federal Taxpayers Registry. Collegiate institutions must enter into an agreement with the IRS and the Financial Intelligence Unit (which is part of the IRS) to be allowed to submit notices.

The first batch of notices were to contain information regarding the operations and transactions that were carried out between September 1 and November 30, 2013; those were to be presented on December 17, 2013.

If facts or evidence indicate that the resources came from illegal means, the representative must present that information within 24 hours. They should not wait to report it on the next 17th of the month. Vulnerable activities must remain confidential, even though they are included in the notices. The companies also should not alert their customers about being included in the notices.

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One important point: if a company has not performed any operations or transactions, it is not exempt from filing notices with business information.

Customer or user identification policy

As part of the Regulations, companies involved in vulnerable activities will create, or expand on, an identification policy of their customers or users, which must be ready within 90 days of registering their representative. Therefore, if a company decided on its representative on October 1, 2013, then it should have had its policy done and ready on January 2014.

The files

Companies must create and maintain a file for each of their customers or users, either before or while carrying out a transaction with them. The guidelines for defining a customer or user include companies and individuals, whether they are foreign, domestic, or trusts.

The documentation that must be included in the customer files covers customer identification. The identification must be performed prior to and when a transaction is performed.

Some of the information that must be requested is:

- Complete name or company name
- Date of birth or date of incorporation
- Country or place of birth
- Nationality
- Activity, profession, or business line
- Address
- Telephone number
- Email
- Federal Taxpayers Registry or Unique Key Population Registration in the case of an individual. For companies, the same information is required, but for its legal representative.
- Identification document, such as type, number, and country from which it was issued (i.e., passport)
- Incorporation agreement: documentation of the company's address
- A document that is signed by those involved stating that the company involved in the vulnerable activity asked for the name of the real beneficiary of the resources and/or money

The guidelines indicate that when the identification documents provided contain deletions or amendments, the representative must ask for another form of identification or, alternatively, two bank or commercial references and two personal references.

The exception: Those who performed vulnerable activities can identify their customers through simplified measures when they are considered to be low-risk. The guidelines establish that the financial sector falls under this category. So, if one of the 15 new vulnerable activities is carried out with a financial company, the customer identification is simplified, minimizing the number of documents and information requested. This is because the financial sector has been regulated since 2004 in terms of anti-money laundering; requirements for three kinds of reports and a designated compliance officer have been established since 2006.

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The company's representative should attach a copy of the notices they have submitted along with an acknowledgement from the IRS that they were received. The companies are obligated to preserve these documents for at least five years from the date of the notice or of the issuance of the corresponding acknowledgment.

Companies that are part of a business group may share client records as long as they have the consent of the client to share its information. Also, companies in a business group should make an agreement between themselves on how records should be handled. The records must be updated at least once each year.

Important dates

- Law enforced: July 17, 2013

- Regulation enforced: September 1, 2013
- Presentation of notices and restricted cash: 60 days after the Regulation (i.e., November 1, 2013)
- Issuance of catalogs for submitting notices: October 31, 2013

What about the financial sector?

In November 2013, the authority issued the guidelines for the preparation of the audit report in multi-purpose unregulated financial corporations, exchange centers, and money remitters, among which:

1. The annual review (January 1 to December 31) can be performed by both an internal and external auditor whenever the person has:
   - professional experience in the prevention of money laundering or auditing;
   - not been convicted of property offenses;
   - not been disbarred from trade or disqualified from engaging in employment, office, or commission in the department of public service or in the Mexican financial system;
   - not been offered to be a director or executive of the company, with the exception of the internal auditor, and
   - has no pending litigations with the company.

2. The appointment of the auditor must be approved by the board of directors or sole director and must be sent in writing, where the auditor states his/her acceptance and confirms that all the above requirements are met.

3. The auditor's report must contain:
   - **Results of the review of the customer or user identification policies:** if the company has these and if they are correctly applied; a review of the files; and the classification of customers or users according to their degree of risk, etc.
   - **Results of the review of the customer or user knowledge policies:** if the company has these and if they are correctly applied; the criteria used to determine the customers' profiles and transactional behavior; if it has an alert system; if politically exposed persons (PEP) are classified; if sensitive or critical operations have been authorized by senior staff; the mechanisms it has to identify the real owner of resources; etc.
   - A**ssessment of reporting trades:** if the company presents the five types of requested reports in a timely manner and the reports are based on relevant, unusual, internal concern, illicit activity, etc.
   - **Assessing the integration of structures:** designation of the compliance officer; integration of the Communication and Control Committee (for companies with more than 25 employees); if they meet the designated functions, among others.
   - **Evaluation of training and dissemination:** if the company has an annual program; if it has disseminated knowledge; measures used by the company to train those employees who did not pass the course; etc.
   - **Assessment of suitability of the automated system used to record and track trades:** if it ranks the types of transactions, products, or services; if it groups the operations of a same client or user; if it runs systems alerts, etc.
   - **Assessment of the knowledge of employees who work in the areas of customer service or resource management:** employee selection; review of files; accreditation of their training.

- **Verification that the company has the means to preserve copies of transaction reports** as well as data and documents of comprising records and customer identification for at least ten years.
- **Review of officially recognized lists** used by the company to check that it has the means to identify people, countries, or jurisdictions linked to terrorism or financing it; illegal activities; preferential tax regimes; money laundering; etc.
- **A section for recommendations or corrective actions** deemed necessary by the auditor to comply fully with the law.

4. The report must be submitted 60 days after the fiscal year end (i.e., every March) to the IRS. Formerly, it was submitted to the Communication and Control Committee or the compliance officer.

But the most important is...

At this point, companies must have already registered their representatives with the IRS and verified which of the 15 new vulnerable activities they have carried out since September 1, 2013. Or, put another way, companies must report which vulnerable activities are applicable to them according to the amounts established by the law.

Then:

1. Check if those transactions have all the necessary information about their customers. If they don't, it's time to start collecting for integrating records.
2. Estimate the volume of transactions that will be reported monthly. This will help decide if the company needs to appoint of a person or area that is completely geared toward the analysis and reporting of transactions to the IRS, or if it can be done sporadically.
3. Initiate development of the Know Your Customer policy, according to the company's internal processes.

There are already some cases of companies that are struggling with the implementation of the new law,[2] but the authorities have not granted any exceptions.[3] Let's recall that the new Mexican law goes hand-in-hand with the international procedures set by the Financial Action Task Force and the European Union Guidelines. This indicates that there is little or no chance that the authorities will radically change the law; on the contrary, it's necessary for the new vulnerable activities to include concepts such as PEP and its treatment, as well as best practices in the application of risk approach in each company. Therefore, this is just beginning... ✳

Let's recall that the new Mexican law goes hand-in-hand with the international procedures set by the Financial Action Task Force and the European Union Guidelines.

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1. CNN Mexico Report, September 2013 Edition, Business and Politics Outlook. Available at http://bit.ly/1cFmwVH
2. *Reforma* newspaper: "Llueven amparos por Ley Antilavado." September 28, 2013. Available at http://bit.ly/KhsdiI (in Spanish)
3. *La Jornada* newspaper: "Sigue vigente la ley contra el lavado; jueces niegan amparos", October 18, 2013. Available at http://bit.ly/1lxdoDO (in Spanish)