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## The Mexican Money Laundering Law

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Giancarlo Schievenini

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On October 17, 2012, the Ministry of Finance and Public Credit (the "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".



According to President Calderón, the Money Laundering Law provides the State with the best tools to combat and pursue illegal transactions, which represent about \$10 billion Pesos to \$45 billion Pesos money laundering each year.

The financial transactions derived from organized crime and specifically, from drug traffic have strengthened the operational capacity of mobs and cartels at national and international levels. The Money Laundering Law is envisioned to assure the proper organization of the public institutions working for a same purpose ; for instance the law allows the access and exchange financial information between the Ministry of Finance—which will be the authority empowered to enforce the statute—and local and federal prosecutors, developing an appropriate intelligence system to track and identify individuals and corporations related to such criminal activity.

The enactment of the Money Laundering Law will certainly weaken the financial structures of criminal organizations while protecting the integrity of the national economy and financial system, this due to the improvement and "*adoption of the most advanced international criteria in the world of money laundering*", said President Calderón.

The Money Laundry Law creates a special regime to identify unusual activities, as well as a Special Unit for Financial Analysis attached to the Attorney General's Office.

For your reference, below you will find a summary of the most important aspects of the Money Laundering Law:

1. The Money Laundering Law establishes a series of activities described as “*Vulnerable Activities*”. Among the list of Vulnerable Activities, we found the following: (i) the execution of lease agreements in an amount equivalent to 1605 times the minimum wage in Mexico City (approx. USD\$7,695.00),<sup>1</sup> (ii) the incorporation of companies, mergers or acquisitions, capital increases, etc., if such activities are requested or instructed to a law firm, (iii) the purchase or sale of real estate, the granting of powers of attorney, the creation of trusts which purpose is the property transfer of such real estate or securities over such real estate, if such activities are performed before a notary public; and (iv) the provision of professional services (advisors, consultants, lawyers, auditors, accountants, brokers) related to the sell, trading and purchase of goods, which transactions exceed the specific amounts provided thereunder.

Note that, if the amount of a transaction considered as Vulnerable Activity surpasses the thresholds set forth in the Money Laundering Law, the involved individual or company, the attorney in charge of such activities or the notary public will be required to report such transaction to the Ministry of Finance.

2. Performance of Vulnerable Activities shall be reported before the Ministry of Finance on a monthly basis, no later than the 17<sup>th</sup> day of the following month. The corresponding reports shall contain: (i) general information of the individual or company undertaking the Vulnerable Activity, (ii) general information of the client, users or beneficiary of the transaction, and information regarding its activities or occupation, and (iii) general description of the Vulnerable Activity.

3. Failure to comply with the reporting obligations to the Ministry of Finance may result in the imposition of penalties ranging from 10,000 to 65,000 times the minimum wage in Mexico City (i.e. approx. USD\$623,300.00 – USD\$4,051,450.00), or an amount equivalent to 10% of the transaction, if the transaction can be quantified in money, whichever results higher.

4. The Money Laundering Law establishes restrictions on cash transactions , such as:

- a) Real estate operations up to the equivalent amount of 8,025 times the minimum wage in Mexico City (approx. USD\$38,500.00).
- b) Purchase or sale of cars, boats or airplanes for an amount equivalent to 3,200 times the minimum wage in Mexico City (approx. USD\$15,300.00).

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<sup>1</sup> The minimum wage in México City is \$62.33 pesos (approx. US\$4.79 dollars)

- c) The assignment, sell and establishment of liens over the membership interests and shares of companies for an amount equivalent to 3,200 times the minimum wage in Mexico City.

5. 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 spent over an amount equivalent or higher than 1,285 times the minimum wage in Mexico City (approx. USD\$6,100.00).

6. The Money Laundering Law sets forth specific obligations for individuals or companies carrying out Vulnerable Activities such as:

- a) Identify users and clients, and request identification documents obtaining a copy of the same.
- b) In a business relationship, the service provider shall request information such as employment or occupation based on client's registry at the Federal Taxpayers' Registry.
- c) When dealing with an individual acting as representative of a company or other individual, request information of the origin of the funds and, if available, provide personal information of the fund's owner.
- d) Keep records and registries regarding Vulnerable Activities helping to identify the clients or users.

If the client or user refuses to provide any information, the service or goods provider shall refrain from doing any transaction with such individual.

7. Companies shall appoint a representative to be in charge of the compliance with the obligations provided in the Money Laundering Law before the Ministry of Finance. Up to the designation of such representative, the responsible will be the members of the board of directors or sole director of the company.

8. In order to facilitate the submission of reports and notices to the Ministry of Finance, companies and individuals devoted to similar business or activity may create a "*collegial body*" to meet such reporting obligations.

The collegial bodies shall obtain their registration with the Ministry of Finance for such purpose. Note that any liability arising from the failure to file a notice or report shall be solely on the defaulting member.

9. Verification visits under the Money Laundering Law shall be conducted for the sole purpose of gathering information and documentation related to Vulnerable Activities, in accordance with the Federal Law of Administrative Procedure (*Ley Federal del Procedimiento Administrativo*).

The Money Laundering Law comes after a legislative procedure of almost two and a half years, and a few months after a report by the U.S. Senate informed that during 2007 and 2008 a banking institution introduced \$7 billion dollars to the U.S. without considering the source or such funds.

Moreover, U.S. Department of Treasury has concluded that transnational criminal organizations operating in the U.S. and Mexico are employing various financial mechanisms to move and launder the vast income they generate, referring money laundering to financial transactions in which criminals seek to disguise the proceeds, sources, or nature of their illicit activities.<sup>2</sup>

The Money Laundering Law will become effective 9 months after its publication in the Federal Register (*i.e.* July 17, 2013). The Regulations to the Money Laundering Law are expected to be published on August 17<sup>th</sup>, 2013.

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<sup>2</sup> U.S. Department of Treasury , "Resource Center: Money Laundering," <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/Money-Laundering.aspx>