



TERRUM

Briefing, analysis, opinion and insight of legal affairs in Mexico
Digital publication by SIERRA VÁZQUEZ OLIVARES MOLINA

Aug 15, 2013 year 01 | No. 11

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“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”

Anti-Money Laundering Legislation comes into force in Mexico.

by Mario Molina.

This past July 18, the so called anti-money laundering law entered into force in Mexico. Different to the recent structural reforms that have been implemented under Enrique Peña's leadership, this particular legislation is not a result of the *Pacto por Mexico* agreement, but is reminiscent of Felipe Calderon's presidency.

The legislative process of this particular law begun on August 26, 2010 when the past administration proposed an initiative that contained the "Federal Law to Prevent and Identify Activities with Unlawful Resources and Terrorism Finance" which reformed two articles of the Federal Tax Code.

On the way, it lost the "terrorism finance" term and was finally published by Felipe Calderon on October 17, 2012, stating that it would enter into force nine months later and that the specific rules of application would be issued within a thirty day period. Nine months expired precisely on July 18, and we are currently waiting the final regulations, which will give us a more accurate scope on the usefulness of the law.

In this text, we will approach the most relevant aspects of this new legislation, to describe as concisely as possible the immediate implications that it will have on the financial system, professional services and other activities that will now be considered as vulnerable¹. Since it was prepared to comply with the recommendations of the GAFI², it predictably highlights the necessity to identify the origin of cash payments and the identity of the beneficiaries with requirements as follows:

- 1.- A prohibition on making cash payments for the acquisition of assets;
- 2.- An obligation of non-financial intermediaries to identify its clients and file reports of suspicious transactions³ ;
- 3.- An obligation of financial intermediaries to file reports of suspicious transactions and implement mechanisms to prevent them;

¹According to the Federal Law to Prevent and Identify Activities with Unlawful Resources, the following activities are considered as vulnerable to money laundering:

- Bets and raffles;
- Issuance of credit and service cards;
- Issuance of prepaid cards;
- Issuance of traveler checks;
- Loans and guarantees;
- Construction services (where sales are involved);
- Buying or Selling of precious metals and jewelry;
- Art brokerage and auctions;
- Buying or selling of vehicles (including aircraft);
- Services related to armored vehicles;
- Values transportation services;
- Charity donations;
- Property rights over real estate.

²Groupe d'adiction financière sur le blanchiment de capitaux (GAFI) or Financial Action Task Force on Money Laundering (FATF).

- 4.- The granting of verification authority to the Ministry of Finance;
- 5.- The creation a Finance Intelligence Unit.

General prohibitions.

In the past, the only regulation covering cash deposits was the Cash Deposits Tax and the mandatory reports that the banks were obligated to send to the Ministry of Finance every time a transaction of certain characteristics was made. Under this new law, an express prohibition has been put in place, and sectors that were operating mostly without any regulation at all, will now face the need to create compliance areas and hire specialized personnel to identify its clients, file reports and create strategies to prevent the use of their enterprises as money-laundering vehicles.

In rough terms, any transfer of property (selling or buying) over US\$38,000.00 in cash is now prohibited for real property, and over US\$15,000.00 for any other kind of asset.

Non-financial Intermediaries.

Regarding the new obligations for non-financial intermediaries, this law represents a clear change of direction from the former President Fox's policy, establishing strong regulation and administrative burdens to a sector that was previously even considered as privileged in some measure.

Instead of continuing with the deregulation of credit access and fiduciary activity initiated in 2006 with the reforms to the General Act of Credit Organizations⁴, now the Mexican Legal system is taking two steps back by imposing strict supervision on privately owned companies that entered the business under a complete different scenario.

Additionally for activities listed as vulnerable, non-financial intermediaries will now be obligated to file reports of certain transactions requested by or performed on behalf of its clients.

Financial Intermediaries.

Further obligations are being introduced for financial entities, mostly directed to amplify the identification of client policies.

Perhaps this sector will be the less affected, since most of the obligations contained in the act were already in place for them, however, a more structured and efficient system will be needed, since it is predictable that auditing from the authorities will increase.

³This obligation was already in force for financial entities.

⁴The General Act of Credit Organizations prevented the legal operation of the "SOFOM", which was an unregulated legal regime for private owned companies specifically dedicated to the credit sector.

Ministry of Finance (*Hacienda*) supervision and the Finance Intelligence Unit.

Besides its tax verification abilities, *Hacienda* will now be entitled to perform verification audits to any of the subjects regulated by the new act, in order to verify if the identification of clients and filing of reports procedures are being carried out properly. Lastly, in what can be understood as an effort to coordinate investigations, the creation of a specialized unit in the Attorney General's office is contemplated.

In summary, with this new law Mexico will adopt widely accepted concepts in use in other countries regarding the control of cash transactions, such as "know your client" and mandatory reports to the tax authority.

It will be very important that Congress endorses concurrent legislation to relieve the new burden of administrative obligations for intermediaries and professionals related to the credit sector. This in order to prevent a massive emigration of specialized credit companies to a less regulated regime.

Mexico-Queretaro rail route the most attractive: Bombardier.

Inside the passenger train package proposed by the federal government, the project that most attracted Bombardier for the production of the train cars is the Mexico-Queretaro route. This is because of the long term potential size of the interconnecting traffic. Juan Manuel Gonzalez, Manager of business development in Latin-America for the Canadian enterprise, said that they are interested in an integrated project such as this. He also said that although there is no certainty regarding the corridors where this train line will operate, it will probably join the city of Celaya or Leon, and there are also possibilities of reaching Aguascalientes and even Guadalajara. Mr. Gonzalez indicated that Bombardier will be looking to participate, and he trusts that they will win some of the tenders, either for the Mexico-Queretaro route, the Toluca train, or the Trans-peninsular train to the Yucatan. *Milenio 12/07/2013.*

President Peña Nieto announces infrastructure investments of 4 billion pesos.

President Enrique Peña Nieto announced a six- year infrastructure plan of almost four billion pesos for areas such as communications and transportation and also to attend to the requirements of strategic agencies such as Pemex, CFE and Conagua. In accordance with the investment program announced, Transportation and Communication will receive an infrastructure investment of 1.3 billion pesos. Telecommunications will receive an investment of 700 thousand million pesos and Transportation, which includes highways, ports, airports and trains, 582 thousand million pesos. He also mentioned that the amount could possibly increase with the fiscal reform mentioned in the "Pacto por Mexico", which will be presented to the Chamber of Deputies in the month of September. *El Universal. 16/07/2013.*

CCE: Infrastructure Plan opens encouraging expectations.

The Business Coordination Council (CCE for the acronym in Spanish), indicates that the Infrastructure Investment Program for Transportation and Communications expected from 2013-2018, will generate certainty for investment and within these economic areas. The CCE emphasized through a release that the program will encourage both growth and the competitiveness within the country. They also ratified the President's interest to add the National Infrastructure Plan as a fundamental part of national development. Also they indicate that Private Initiative will complement public investment through different mechanisms. *El Universal 16/07/2013.*

Mexico in sixth place with lower unemployment: OCDE.

The Organization for the Cooperation and Economic Development (OCDE is the acronym in Spanish) foresees that Mexico can to reduce its unemployment rate to 4.8 % by the end of 2014. This will mean the Mexico would take 6th place out of 34 countries members with the lowest rate of unemployment. However, the observer of the panorama of employment in Mexico for 2013 should note that the fact that the unemployment rate is relatively low can be explained by the lack of a public system of unemployment benefits. This means, that a lot of workers that lose their job, have to take the first opportunity presented to them. *The Economist*. 16/07/2013.

Defining “Pacto por Mexico” and the schedule of constitutional reforms.

The members of the “Pacto por Mexico” agreed on a commitment to address the areas related to electoral reform so as to finish with the impunity, an integral political reform of the Federal District and to approve the regulatory law of the political reform of 2012 in order to include citizen nominations, the citizen initiative, the popular consultancy and preferential initiatives. They also mentioned that they will work on secondary educational reform, the approval of the Financial Reform and the debt limit of cities and of the state. *El Heraldo de México*. 31/07/2013.

Mexico foreign investment will be equal to Brazil’s after energy reform.

Mexico would probably receive 35,000 million dollars in the first year, after entry into force of the energy reforms, which probably could increase the GDP by two points, as estimated by the Manager of Moody’s Analytic for Latin-America, Alfredo Coutiño. He also explained that this flow of foreign investment is similar to the one that Brazil received under the administration of ex-president Lula Da Silva, in his first year of the enforcement of their energy law. However he also clarifies that to make a better projection, he would have to know the details of the reform project. *The Economist*. 31/07/2013.

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