

ROBLES, SÁNCHEZ, LAZO  
GALLARDO & VALDEZ

# **FEDERAL LAW FOR THE IDENTIFICATION AND PREVENTION OF TRANSACTIONS WITH FUNDS FROM AN ILLEGAL ORIGIN**

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## **I. Objectives:**

- 1) To guard the financial system and national economy;
- 2) To detect and prevent acts or transactions that involve monies from an illicit origin;
- 3) To investigate and prosecute illegal acts that involve monies of illicit origin;
- 4) To eliminate the use of monies that finance criminal organizations

## II. Crime of transactions with illicit origin resources:

“Artículo 400 Bis.- A five to fifteen years prison sentence will be imposed and a thousand to five thousand day fine to whomever by himself/herself or through a third party perform any of the following act; acquire, alienate, manage, protect, exchange, deposit, exchange in guarantee, invest, transport or transfer, within national territory or from Mexico to foreign lands, resources, assets or rights of any kind of nature, knowing that they come from or represent the product of an illicit activity, with any of the following purposes: to conceal or pretend to conceal, cover up or hamper the finding out of the origin, location, destination or ownership of those resources, assets or rights, or to encourage any illicit activity”.

## Elements:

- 1) **Comportment:** acquire, alienate, manage, store or protect, exchange, deposit, exchange in guarantee, invest, transport or transfer.
- 2) **Assets:** being these resources, assets or rights of any kind of nature, knowing that they come from or represent the product of an illicit activity.
- 3) **Purpose:** to conceal or pretend to conceal, cover up or hamper the finding of the origin, location, destination or ownership of those resources, assets or rights, or to encourage any illicit activity.

### III. Authorities:

#### 1. Secretaria de Hacienda y Credito Publico.

##### Faculties:

- a) Receive notices of who is carrying out vulnerable activities;
- b) Require the information, documentation, data and images needed to execute its faculties;
- c) Present the corresponding denunciation before the Federal Public Ministry when facts have been identified as suspected criminal acts;
- d) Require the appearance of the suspected offenders and others involved for the verification of the legal obligations of compliance.

## 2. Attorney General of the Republic, through the Special Unit for Financial Analysis

### Faculties:

- a) Investigate to obtain trace or give evidence linked to transactions with resources of illicit origin;
- b) Require reports, documents, opinions and evidence in general public administration offices of the three branches of government, autonomous agencies, constitutional bodies, and those persons responsible for providing notices to organizations with supervised activities provided for in the Law.

### Requirements:

- i. Requirements regarding a formally initiated investigation;
- ii. About individuals and events presented in a preliminary inquiry.

## **IV. Vulnerable Activities:**

Acts or activities realized in a professional or habitual way that might involve Resources of Illegal Origin

Classification according to the amount of the activity or kind of compensation:

- o With no obligation.
- o Identification.
- o Notice
- o Prohibition.

## V. Vulnerable Activities Regarding the Public's Faith in Matters:

### 1. Notary Publics:

**a) Real Estate:** Transfer or constitution of real rights over real estate properties, except the guarantees of the financial system or housing public organisms.

Notice: price impacted, Catastro value or commercial value of the property, guaranteed amount, equal or higher than:

VSMVDF=\$16,000

Pesos=\$1'036,160

**b) Powers of Attorney:** for administration actions or irrevocable domain.

Notice: In all cases



**c) Personas Morales (Legal Entity):** constitution, patrimonial modification from the increase or decrease of capital, fusion or losses, buying and selling of shares and corporations.

Notice: VSMVDF=8,035                      Pesos=\$519,699

**d) Fideicomisos (Trusteeship):** constitution or modification of irrevocable trust, transfer or a guarantee over a real estate property, except when guarantee in favor of a financial system institution or public housing organisms.

Notice: VSMVDF= 8,025                      Pesos=\$519,699

**e) Credits:** mutual or credits, with, or with no guarantee, from guarantors that are not part of the financial system or are not a public housing organism.

Notice: In all cases.

## 2. Public Brokers:

### **a) Appraisal:** over assets

Notice: VSMVDF= 8,025                  Pesos= \$519,600

### **b) Commercial legal entities:** constitution, increase or decrease of capital, fusion or losses, buying and selling of shares and social parties.

Notice: VSMCDF= 8,035                  Pesos= \$519,699

### **c) Fideicomisos:** constitution, modification or transfer in trust ownership;

### **d) Credits:** mutual commercial or commercial credits in which the guarantor is not part of the financial system.

Notice: according to the indexed issues of this section.

## VI. Vulnerable activities from other economic agents:

**1. Gambling, game competition, or raffles:** tickets, cards or any similar receipt of purchase, games competition or raffles, as well as the payment of the prize.

Identification: VSMVDF= 325 Pesos= \$21,047

Notice: VSMVDF= 645 Pesos= \$411,770.60

**2. Credit card services or prepaid credit cards:** that are not issued by financial entities.

Credit cards identification: Monthly expenses VSMVDF= 805  
Pesos= \$52,131.80

Credit cards notification: Monthly expenses VSMVDF= 1,285  
Pesos= \$83,216.60

Prepaid cards notice: VSMVDF= 645  
Pesos= \$41,770.20



**7. Art pieces:** auction or commercialization.

Identification VSMVDF= 2,410 Pesos= \$156,071.60

Notice VSMVDF= 4,815 Pesos= \$311,819.40

**8. Air, water or land vehicles:** commercialization or distribution of vehicles, new or second-hand.

Identification VSMVDF= 3,210 Pesos= \$207,879.60

Notice VSMVDF= 6,420 Pesos= \$415,759.20

**9. Armor plating (bullet proofing):** of land vehicles and real estate.

Identification VSMVDF= 2,410 Pesos= \$156,071.60

Notice VSMVDF= 4,815 Pesos= \$311,819.40

**10. Moving and storage of values and money:** with exception of those in which the Bank of Mexico takes part and institutions that work with deposits of valuables.

Notice VSMVDF= 3,210 Pesos= \$207,879.60

**11. The supplying of professional services:** as an independent, with no employment relationship with the client, when preparing for the client or carry out in his/her name and representing the client in any of the following transactions:

- a) Buying and selling of real estate properties or trust title transfers over real property;
- b) Administration or managing of resources, valuables or any other client assets;
- c) Managing of bank accounts, savings or values;
- d) Organize capital investments or any other kinds of resources for construction, operation and administration of a commercial company, or
- e) The constitution, division, merger, operation and management of legal persons or corporate vehicles, including the trust and the purchase or sale of business entities.

Notice: when the provider of such services performed on behalf of a client, or financial operation that is related to the processes specified in subsections of this section, with respect to the secrecy and security of defense in terms of the Law.

**12. Donations:** reception of donations by associations and non-profit corporations.

Identification VSMVDF= 1,605 Pesos= \$103,930.80

Notice VSMVDF= 3,210 Pesos= \$207,879.60

**13. Customs agent or representative:** for the following merchandise:

- a) Land, air and water vehicles, new or semi-used;
- b) Raffle and gambling machines, new or semi-used;
- c) Equipment and material for fabrication of payment cards;
- d) Jewelry, watches, precious stones and precious metals;
- e) Art pieces;
- f) Ballistic resistance materials for armor plating of vehicles,

Notice: In all cases above mentioned

**14. Private rights of use and enjoyment of real estate properties.**

Constitution of private rights of use and enjoyment of real estate properties.

- Lease
- Time share
- Partnership

Identification: monthly value more than VSMVDF= 1,605

Pesos= \$103,930.80

Notice: monthly value more than VSMVDF= 3,210

Pesos= \$207,879.60



## **VII. Obligation-Free Transactions**

The acts or transactions made for lower amounts previously mentioned will result as obligation-free.

Sum accumulated in a six month period that exceeds the stated amounts in each case that causes a notice generation, might be considered as a transaction subjected to the obligations of presenting such.

**VIII. Identification of Transactions:** those who carry out Vulnerable Activities will be obligated to the following:

1. Identify clients and users, verify their identity based on their credentials and official documentation, and request copy of such documentation;
2. When there is a business relationship, request their occupation and commercial activities information.
3. Request information about the owner/beneficiary and exhibit official documentation that shows identification of him/her, if you can attain such, if not this must be declared;
4. Storing, protecting, guarding and averting from destruction or the concealing of information and documentation that helps to support Vulnerable Activities.

The information and documentation must be kept physically or electronically, for a five year period, from the date the Vulnerable Activity started.

## **IX. Notifications to SHCP**

Temporary: Persons who realize Vulnerable Activities must present the corresponding notices, no later than the 17<sup>th</sup> of the next month.

Form: notices will be delivered through electronic means and with the official format established by the organization (SHPC).

Content:

- a. General information of those who realize the Vulnerable Activity;
- b. General information of the client, user or beneficiary, and the information of his/her activity or occupation;
- c. General description of the Vulnerable Activity which such notice was generated for.

Special rule notices to notaries: notaries and brokers are to present relevant notices by electronic means and to report or present the statements and notices referred to in the federal tax provisions.

## **X. Prohibition of payments in cash**

It is prohibited to pay obligations and overall pay, as well as accept payment with coins or bills, national or foreign currency and precious metals, in the following situations:

i) Transfer or constitution of rights over real estate properties

Amount: VSMVDF= 8,025 Pesos=\$519,699

ii) Property transfer or constitution of rights over vehicles, new or second-hand, being these either air, water or land.

Amount: VSMVDF= 3,210 Pesos= \$207,879.60

iii) Property transfer of watches, jewelry, precious metal and precious stones, and art pieces

Amount: VSMVDF= 3,210 Pesos= \$207,879.60

iv) Acquisition of gambling tickets, competition or raffle tickets, and payment of prizes

v) Armor plating services

Amount: VSMVDF= 3,210 Pesos= \$207,879.60

vi) Title transfer or constitution of rights of any nature over corporations or legal entities.

Amount: VSMVDF= 3,210 Pesos= \$207,879.60

vii) Constitution of private rights of use or enjoyment of real estate, vehicles, watches, jewelry and precious metals

Amount: VSMVDF= 3,210 Pesos= \$207,879.60

Special rule for Notaries:

**Special rule for “Fedatarios”** (Public Notary and Public Brokers):

Public “Fedatarios”, any instruments where they help create the appearance of any of the prohibited acts or transactions, must identify the payment form when the value of the transactions are equal to or more than;

Amount: VSMVDF= 8,025      Pesos=\$519,699

Declaration under oath of price’s payment form: In case the value of the transaction is lower than the aforementioned, or when the act or transaction has been paid partially or totally prior to signing the instrument. An under oath declaration made by the clients or users will be enough.