

# Amendments to the regulation on money laundering prevention and financing of terrorism applicable to financial institutions

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Amendments to the general provisions on money laundering and financing of terrorism applicable to banking institutions, brokerage houses, regulated and unregulated non-bank lending and finance institutions, currency exchange centers and bureaus (*“centros cambiarios y casas de cambio”*), money transmitters, licensed warehouse companies, saving and credit cooperative companies, and investment fund operator and distributor of investment fund shares companies, (jointly the **“Entities”**) were published on February 24, March 9 and March 23 of 2017.

Overall, the amendments are an update on the implementation of recommendations issued by the Financial Action Task Force (*“Grupo de Acción Financiera”*) (**GAFI**), an international organization which Mexico has been a part of since 2000.

The following are highlights of the amendments to the referenced provisions:

## 1. Implementation of a Risk-Based Approach

The Entities in their respective internal policies must incorporate a designed and implemented methodology to carry out a Risk<sup>1</sup> assessment arising from their operational products, services, practices or operational technologies. Such methodology must establish the processes for the identification, measurement and mitigation of Risks, for which the identified risk factors must be taken into account, as well as the national risk assessment and its respective update conducted by the Ministry of Finance And Public Credit (*“Secretaría de Hacienda y Crédito Público”*) (**SHCP**), and communicated to the National Banking and Securities Commission (*“Comisión Nacional Bancaria y de Valores”*) (**CNBV**).

In the case of entities that are part of a financial group, the results of the methodology that, if applicable, has been implemented by the other entities that form part of the same group should be taken into account.

In this regard, several amendments establish, among other things, the specific points that must be met by the Entities for the design of the risk assessment methodology; adjustments to the policies when new risks are

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<sup>1</sup> Risk is defined as the probability that a financial institution can be used by a client or user to perform acts or transactions classified by the applicable regulation as a crime of financing terrorism or transactions with resources of illicit origin.

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identified, and the obligation to review and update each year the compliance with the obligations in such matter, which must be written and available to the SHCP through the CNBV.

It must be emphasized that, in accordance with the applicable general provisions, depending on the type of entity in question, such Entities must establish in their internal policies the terms in which they will comply with this risk obligation. Therefore, the implemented methodologies must be designed in such a way as to keep a balance between adopting the required obligations? in accordance with the provisions, but without self-imposed excessive obligations that could lead to non-compliance with their own manuals.

## **2. Identification of the shareholding and corporate structure of the clients that are legal entities**

In the case of clients that are legal entities, information that identifies the following must be gathered in the identification file of the client: (i) shareholding structure or equity quotas and (ii) in the event that the Client has a degree of risk other than "low", its internal corporate structure, which refers to the organizational chart of the Client as a legal entity, taking into account at least the full name and position of those individuals who occupy the positions between the CEO and the immediate lower rank position, as well as the full name and corresponding position of each of the members of its board of directors or equivalent. Likewise, the Real Owners (i.e., the individuals who benefit from an account, contract or transaction and are ultimately the owners of the resources) who have the control of the clients that are legal entities must be identified.

It must be pointed out that previously, the obligation to identify the shareholding structure or equity quotas was only viewed with respect to foreign legal entities and in case a legal entity was classified as a high-risk entity, a second obligation to gather the respective documentation to identify the partners or shareholders was imposed.

Regarding the foregoing, it will be important to pay attention to the applicable procedures in accordance with the provisions established in its internal policies in relation to such matter, whenever persons that are part of the shareholding structure, equity quotas, or corporate structures of their clients and users are included in the List of Blocked Persons issued by the SHCP.

## **3. Threshold of Relevant and Unusual Transactions**

The threshold is modified in the definition of Relevant Transactions in order to include in such definition a Transaction carried out with the bills and coins of legal tender in the United Mexican States or in any other country, as well as with traveler's checks, and coins minted in platinum, gold and silver for an amount equal to or greater than the equivalent in national currency at US \$7,500. Previously, this threshold was US \$10,000.

On the other hand, in the case of fractionated transactions that may be classified as Unusual Transactions, those carried out under the same account or contract, as the case may be, as those carried out by the same User with foreign currency, travelers' checks, cashier's checks and coins minted in platinum, gold and silver, for multiple or fractionated amounts which, for each individual Transaction, are equal to or greater than the equivalent of US \$500, made in a calendar month of at least US \$7,500 or its equivalent in the currency in question, provided that they do not belong to the Client's transactional profile or, regarding those carried out by Users, it may be inferred from its structuring a possible intention to split the Transactions to avoid being detected. Previously, this threshold was also US \$10,000.

## **4. Terms for the submission of Unusual Transactions and Alarming Internal Transactions**

For each Unusual Transaction identified by an Entity, a corresponding report must be submitted to the SHCP through the CNBV within three business days from the conclusion of the Communication and Control meeting that establishes such transaction as unusual. For purposes of carrying out such resolution, the Entity, through the referred Committee, will have a term that will not exceed 60 calendar days from the generation of the alert through the respective system, model, process, or by the employee of the Entity, whichever occurs first.

It must be pointed out that the maximum period of 60 calendar days to submit the report was not modified. The modification was the inclusion of the resolution by the Communication and Control Committee and, once the committee meeting is held, the obligation to submit the reports within the next three business days.

Previously, the Unusual Transaction report was sent to the SHCP, through the CNBV, within a maximum period of 60 calendar days counted from the generation of the alert through its system, model, process or by the employee of the Entity.

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In relation to the deadline for the submission of Alarming Internal Transactions, the corresponding report must also be filed within three business days of the conclusion of the session of the Committee that dictates it as such. For the purpose of carrying out the resolution in question, the Entity through its Communication and Control Committee will have a term that will not exceed 60 calendar days from the date on which such Entity identifies the Transaction, through its system, model, process or any employee thereof, whichever occurs first. Previously, also in this case, the deadline for the submission of the report was within a maximum term of 60 calendar days from the Transaction's detection.

#### **5. Internal appointment of a Compliance Officer for a specific period**

In order for the Entities to be able to comply with the applicable provisions regarding the obligation to have at all times an officer who acts as a broker with the authorities, it is possible to appoint an internal compliance officer in case the current officer in charge is revoked from his position or is unable to carry out his duties. The period for which the Internal Compliance Officer may occupy the position shall be up to ninety calendar days in a calendar year.

#### **6. Acceptance of official identifications**

The acceptance of new customer identification documents, including a driver's license.

#### **7. Term for the annual audit resolution**

The wording for the term of the assessment and resolution regarding compliance in this matter of the internal audit area, or an external auditor, has been modified. Previously, the provision stated that such assessment and resolution would be carried out "annually"; now, the assessment and resolution are to be carried out from "January to December", or, regarding the term that results from the date in which the beginning of operations of the Entity in question is authorized to December of the respective year. The obligation to submit the results of the audit to general management and to the Communication and Control Committee was not modified, with the purpose of assessing the applicable operational effectiveness, as the case may be. Nonetheless, no member of the Control and Communication Committee may be involved in the assessment exercise.

Likewise, the obligation to keep such resolution for a term that may not be less than five years and submit it to the CNBV within 60 calendar days of the closing of the respective fiscal year was not modified.

#### **8. Agreement for the exchange of information between Entities that belong to the same financial group**

Entities that belong to the same financial group in accordance with the Law to Regulate Financial Groups may exchange information with regard to the prevention of transactions with resources of illicit origin and financing of terrorism at a group level.

The above will only be possible through an agreement based on the official form issued by the CNBV, which shall regulate: (i) the confidential treatment of the exchanged information and (ii) the positions of the authorized officers to conduct such exchange.

#### **9. Access to the resources owned by an Entity when one of its clients is included in the List of Blocked Persons**

When the obligation of institutions to immediately suspend acts, transactions or services with clients or users included in the List of Blocked Persons came into effect, the specific situation regarding the resources to which the Entity is creditor in relation to those clients or users was not clear. Previously, it was stated that the SHCP could authorize access to such resources, to the Entity as well as the access to rights, goods and acts, transactions or services, in order to: (i) comply with the international treaties in which the Mexican State is part, in accordance with resolution 1452 (2002) of the Security Council of the United Nations, as well as (ii) to comply with the obligations of any Entity.

The published amendments will clarify the aforesaid situation. Access is permitted to specific resources, goods or rights, as well as acts, operations or services, as the case may be, in accordance with the following: (i) Users listed in the List of Blocked Persons, in accordance with the international treaties entered by the Mexican State, in terms of resolution 1452 (2002) of the Security Council of the United Nations (which was previously stated) and (ii) to the Entities, regarding the obligations with any Client or User contracted with any

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Entity, among others, according to guidelines, procedures or better practices issued by the Ministry to such purpose.

#### 10. Opportunity for credit institutions to conduct personal interviews through videoconference

Regarding the applicable resolution to credit institutions, the opportunity to conduct personal interviews required to open bank deposit accounts in national currency is now available through videoconference.

It is important to note that this situation is not provided for in the applicable provisions to other entities. The possibility to conduct personal interviews through videoconference would have to be permitted, as applicable, to other financial institutions as well in their corresponding regulation.

#### 11. Transitory Provisions

Among other transitory provisions addressed? in these several amendments, it is pointed out that they came into effect the following day via publication in the Federal Official Gazette. Likewise, it is noted that the Entities have a maximum term of 45 calendar days counted from the implementation of the applicable resolution, in order to, at the latest within 270 calendar days, make the necessary adjustments to their systems and start to collect the client information according to the stated terms, submit their internal policies to the CNBV and comply with the rest of the imposed obligations.

List of published amendments

Date	Provisions
24/02/2016	Resolution that amends, adds and deletes several general provisions referred to in article 115 of the Law of Credit Institutions (" <i>Ley de Instituciones de Crédito</i> ").
9/03/2017	Resolution that amends, adds and deletes several general provisions referred to in article 212 of the Securities Market Law (" <i>Ley del Mercado de Valores</i> ").
9/03/2017	Resolution that amends, adds and deletes several general provisions referred to in article 115 of the Law of Credit Institutions regarding 87-D of the General Law of Organizations and Auxiliary Activities of Credit (" <i>Ley General de Organizaciones y Actividades Auxiliares del Crédito</i> ") and 95-Bis of such law, applicable to non-bank lending and finance institutions.
09/03/2017	General applicable provisions referred to in article 95-Bis of the General Law of Organizations and Auxiliary Activities of Credit applicable to persons that carry out the transactions referred to in article 81-A of the same law.
09/03/2017	Resolution that amends, adds and deletes several general provisions referred to in article 95 of the General Law of Organizations and Auxiliary Activities of Credit applicable to the currency exchange centres.
09/03/2017	General provisions referred to in article 95 of the General Law of Organizations and Auxiliary Activities of Credit applicable to the so-called money transmitters by such law.
23/03/2017	Resolution that amends, adds and deletes several general provisions referred to in article 95 of the General Law of Organizations and Auxiliary Activities of Credit applicable to the Licensed Warehouse Companies.
23/03/2017	Resolution that amends, adds and deletes several general provisions referred to in articles 71 and 72 of the Law to Regulate Saving and Credit Cooperative Companies.
23/03/2017	Resolution that amends, adds and deletes several general provisions referred to in article 91 of the Law of Investment Funds.

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